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FORMS AND PROCEDURE

IN

THE BILL CHAMBER.

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BY

D. ANTONIO,

PRINCIPAL CLERK OF THE BILLS, SEQUESTRATIONS, AND PETITIONS.

WILLIAM HODGE & COMPANY,

EDINBURGH AND GLASGOW.

1905.

PREFACE.

THE publication of this book has been undertaken with the single object of furnishing the legal profession with a careful selection of what has appeared to me to be useful forms of Suspensions, Petitions, and other Writs which have passed through and been disposed of in the Bill Chamber during my seven years' tenure of office there. Notes of the procedure which took place in each case are also duly appended. The forms now given are in most instances supplementary to those already published in the Juridical Styles, Vol. 3 (Forms of Process), and in Professor Goudy's Treatise on the Law of Bankruptcy. Points on practice have also been shortly stated under several of the divisions of the volume, and these, it is to be hoped, may be of service to legal practitioners and others in conducting Suspensions, Petitions, or Bankruptcy proceedings in the Bill Chamber. As the forms of Bills for Letters of Horning and Poinding, of loosing Arrestments, of Letters of Inhibition, &c., and all Fiats issued in connection therewith are fully given in the Juridical Styles, none of them are here published.

My acknowledgments are due to Mr. Fraser, Assistant Clerk of the Bills, for his careful revision and valuable suggestions; also to the clerical staff, Messrs. Duncan and M'Laren, for collation of the Suspensions and Petitions; and to Mr. J. Antonio, O.C.S., for the arrangement and collation of the Bankruptcy portion of the volume.

D. A.

BILL CHAMBER,
December, 1904.

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Part I.

PROCEEDINGS IN SUSPENSIONS, INTERDICTS, AND LIBERATIONS.

PROCEEDINGS IN SUSPENSIONS, INTERDICTS, AND LIBERATIONS.

I.—The following are the Three Forms of Suspension and Form of Interdict appended to the Act of Sederunt of 24th December, 1838, following upon Act 1 & 2 Vict. cap. 86. *See* Parliament House Book A, 64, 65. For Specific Forms *see* page 8 *et sequitur.*

1. Suspension of Decrees of Inferior Court pronounced *in foro* where Caution offered.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension for A. [*design*] against B. [*design*].

That the complainer has been charged [*or*, is threatened to be charged] at the instance of the said C. [narrate the charge] most wrongously and unjustly.

That the complainer is willing to find caution acted in your Lordships' books in common form.

May it therefore please your Lordships *simpliciter* to suspend the said pretended decree and charge and whole grounds and warrants thereof; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

[Signed by Agent.]

Procedure.

Caution must be offered and found.

Intimation to respondent by copy of note, with certificate thereon by Clerk, which is as follows:—

"I hereby certify that a note of suspension (of which the "foregoing is a true copy) was this day lodged in the Bill "Chamber, and was marked by me in terms of the Statute "1 & 2 Vict. cap. 86, sec. 4." The presentment of the note on

being certified by the Clerk operates as an interim sist of diligence.

On caution being found, note by suspender to be lodged.

"Of this date, the above note was presented to your "Lordships, and was marked conform to the Statute 1 & "2 Vict. cap. 68, sec. 4, and was duly served upon the "respondent, and, caution having been found, the complainers "crave your Lordships to pass the note."

This note is intimated to respondent. The following order is pronounced:—

"The Lord Ordinary, in respect the suspender has found "caution in terms of the Statute, passes the note."

If caution not found by suspender, the following note is lodged by the charger:—

"Unto the Right Honourable the Lords of Council and Session.

"Note for

"In suspension, &c.

"Of this date, the suspender presented a note of suspension "in which he offered to find caution, and, fourteen days having "elapsed without any bond being lodged, the charger moves "the Court to refuse the note, and find him entitled to "expenses."

The following order is then pronounced on the note:—

"The Lord Ordinary, in respect that the suspender has "failed to find caution in terms of the Act of Sederunt, refuses "the note of suspension; finds the suspender liable in "expenses; modifies the same to £ sterling, for which "decerns."

Note.—A statement of facts and note of pleas-in-law must be annexed to all suspensions of such decrees where the suspender does not offer caution, or where he offers juratory caution, and in suspensions of decrees of removing (sec. 4 of 1 & 2 Vict. cap. 86). The same procedure must be followed where consignation is offered (sec. 3 of Act of Sederunt of 1838).

Suspensions of Sheriff Court decrees in general only competent in cases exceeding £25 in value (Sheriff Courts Act, 16 & 17 Vict. cap. 80, sec. 22).

2. Suspension of Decrees in Absence pronounced in the Court of Session.

1 & 2 Vict. cap. 86, sec. 5, and 31 & 32 Vict. cap. 100, secs. 23 and 24.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension for A. [*design*] against B. [*design*].

That the complainer has been charged [*or* is threatened to be charged] at the instance of the said B. to make payment [here narrate the charge], most wrongously and unjustly, the foresaid decree having been pronounced in absence of the complainer, and without his being heard on his defences against the same.

That the complainer has consigned in the hands of the Clerk the sum of £ , being the expenses decerned for in the said decree, with £ as the dues of extract.

May it therefore please your Lordships *simpliciter* to suspend the said decree in absence and charge and whole grounds and warrants thereof, and to repone the complainer against the same; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

[Signed by Agent.]

Procedure.

On consignation of the expenses the following order is pronounced:—

"The Lord Ordinary passes the note in terms of the Act "1 & 2 Vict. cap. 86, sec. 5."

The note lies in the Bill Chamber for fifteen days, and is thereafter transmitted to the judge who pronounced the original decree.

3. Suspensions not included under preceding two heads, also appended to the Act of Sederunt of 1838.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension for A. [*design*] against B. [*design*].

That the complainer has been charged [*or*, is threatened to be charged] at the instance of the said B. to make payment [narrate the charge] [C.] most wrongously and unjustly, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer is willing to find caution acted in your Lordships' books in common form [*or*, to find juratory caution, complying with the requisites of the Act of Sederunt, which is all that the complainer in his present situation and circumstances is able to find; *or*, is willing to consign the sum charged for; *or*, that the complainer considers that in the whole circumstances of the case he is entitled to have this note passed without caution or consignation].

May it therefore please your Lordships *simpliciter* to suspend the said [pretended decree] charge and whole grounds and warrants thereof [D.]; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

[Signed by Agent.]

Note.—If a liberation, add at [C.], "and the said complainer "was, upon the day of incarcerated in the "prison of where he has remained ever "since," *and* at [D.], "and to grant warrant for charging the "governor or principal officer in charge of the said prison to "set the complainer at liberty."

If the complainer desires to refer to the oath of the respondent, the second paragraph of the note may be in this form:—

"That the complainer is willing to refer the whole points "at issue to the oath of the respondent, and to find caution," *or*, "that the complainer considers that in the whole circum- "stances of the case he is entitled to have this note passed "without caution or consignation."

The prayer will be as follows:—

"May it therefore please your Lordships to allow the "reference to oath, and on advising the same *sim-* "*pliciter* to suspend," &c., &c.

If there has been a poinding and warrant of sale, the statement inserted at [C.] may run thus:—

"And, on the day of the said B. "caused a poinding to be executed of the furniture and "effects belonging to the complainer in the house or premises "situate at and on the "day of obtained from the Sheriff of "a warrant to sell the said furniture and "effects, and appointing the sale to take place on the "day of " *and* at [D.], "and to interdict the "said threatened sale."

Note.—The interdict against sale under warrant should also be directed against the Sheriff Court officials and the auctioneer.

In a note of suspension and liberation, a full copy of the note must be served, and the induciæ of service is very short —usually forty-eight hours.

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4. Interdicts.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A., merchant in B.,
against
C., merchant in D.

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondent, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer is willing to find caution, acted in your Lordships' books, for whatever damage or expense the said respondent may sustain, in case it shall be found by your Lordships that he is liable for the same [*or*, to find juratory caution, complying with the requisites of the Act of

Sederunt, which is all that the complainer in his present situation and circumstances is able to find: *or*, that the complainer considers that, in the whole circumstances of the case, he is entitled to have this note passed, and interdict granted, without caution or consignation].

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent from [here state the specific interdict wanted, and that not by reference to the statement of facts annexed to the note]; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

[Signed by Agent.]

II.—Forms of Suspensions in Specific Cases not included under these appended to the Act of Sederunt of 1838.

Note.—In the following forms of notes of suspension and suspension and interdict, the interlocutors are given which were there pronounced; but, of course, procedure varies in each instance, and the orders noted are only given as indicating the general mode of disposing of questions of the nature raised in the special forms reproduced.

1. Suspension of a Charge for Expenses contained in a Small Debt Decree.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D., *Respondent.*

That the complainer has been charged at the instance of the said respondent to make payment of the sum of £ together with , being the amount of expenses alleged to be due under a decree obtained by the respondent against the

complainer in the Small Debt Court, , on the conform to charges of payment given on the day of most wrongously and unjustly, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer is accordingly under the necessity of applying to your Lordships to suspend the said charges of payment; that the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and suspension and interdict granted without caution or consignation, but he is willing if necessary to consign the sum charged for.

May it therefore please your Lordships *simpliciter* to suspend the said pretended charges of payment and whole grounds and warrants thereof, and [if decree has been given for payment by instalments] to interdict, prohibit, and discharge the said respondent from charging the complainer for payment in virtue of said decree while the instalments payable under the said decree are regularly paid to the respondent; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and sist of execution granted on consignation.

Answers lodged and parties heard.

Note passed and, consignation having been made, sist continued.

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2. SUSPENSION OF A CHARGE ON A BILL.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension for
A. B., *Complainer*,
against
C. D., *Respondent*.

That the complainer has been charged at the instance of the said respondent to make payment of the sum of £ ,

and the legal interest thereof since the same became due, and till paid, contained in and due by a bill of exchange, dated , drawn by , residing at , and accepted by the complainer, payable months after date, and extract registered protest following thereon dated most wrongously and unjustly as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed without caution or consignation, but if your Lordships think it necessary, the complainer is willing to find caution acted in your Lordships' books in common form, or to consign the sums charged for.

May it therefore please your Lordships *simpliciter* to suspend the said charge and whole grounds and warrants thereon; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and execution sisted.
Answers lodged and parties heard.
Note passed on caution and sist continued.

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3. SUSPENSION BY AUCTIONEERS OF A CHARGE TO DELIVER FURNITURE TO RESPONDENT, WHICH FURNITURE HAD BEEN REMOVED FROM HIS HOUSE.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension for
A. B. & Co., Auctioneers and Valuators: C. D. and E. F., the individual Partners of said Firm, *Complainers*,
against
G. H., *Respondent.*

That the complainers have been charged at the instance of the said G. H., under the pain of imprisonment, to deliver to him within seven days of the

the furniture removed from his house, on the morning of , to their stores, and which the Sheriff of interdicted them from selling or disposing of or giving delivery to any person or persons other than the said G. H., all as the copy of the said charge herewith produced more fully bears, most wrongously and unjustly, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainers consider that in the whole circumstances of the case they are entitled to have this note passed without caution or consignation.

May it therefore please your Lordships *simpliciter* to suspend the said charge and whole grounds and warrants thereof; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and execution sisted.

Parties heard on answers and note passed, and sist continued without caution.

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4. SUSPENSION OF A WARRANT OF EJECTMENT ISSUED BY THE SHERIFF.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension for
A. B., *Complainer*,
against
C. D., *Respondent*.

That the complainer is threatened with proceedings for removal and ejectment following upon a warrant granted on , by the Sheriff-Substitute of , at , said to have been pronounced in the action of ejectment after-mentioned, at the instance of the respondent

against the complainer, most wrongously and unjustly, as will appear to your Lordships from the annexed statement of facts and note of plea-in-law.

That the complainer is willing to make consignation of the sums alleged to be due by him or to find caution acted in your Lordships' books in common form.

May it therefore please your Lordships *simpliciter* to suspend the said warrant and all proceedings thereunder; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and execution sisted.
Answers lodged and parties heard.
Note passed on caution and sist continued.

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5. SUSPENSION OF SUMMARY WARRANT FOR PAYMENT OF RATES OBTAINED AGAINST A COMPANY—CONSIGNATION OFFERED.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension for

The Company, Limited, incorporated under the Companies Acts, 1862 to 1900, and having its registered office at , *Complainers*,

against

A. B., Collector of Rates for the Parish Council of in the County of , *Respondent.*

That the complainers are threatened with poinding of their goods and effects upon summary warrant at the instance of the said respondent for payment of the sum of £ , most wrongously and unjustly, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainers are willing and offer to consign the sum for which poinding is threatened.

May it therefore please your Lordships *simpliciter* to suspend the said threatened poinding and whole grounds and warrants thereof; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered, and execution sisted on consignation.
Answers lodged and parties heard.
Note passed and, in respect of consignation, sist continued.

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6. SUSPENSION OF THREATENED CHARGE UPON THREE PROMISSORY NOTES GRANTED BY COMPLAINER TO RESPONDENT, AS ALSO INTERDICT AGAINST TRANSFERRING SAME—CONSIGNATION OR CAUTION OFFERED.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension for
A. B., *Complainer*,
against
C. D., *Respondent.*

That the complainer is threatened to be charged at the instance of the respondent to make payment of three promissory notes, each for the sum of £ , dated the day of , and payable months after date, granted by the complainer in favour of the respondent, most wrongously and unjustly.

That the complainer is therefore under the necessity of applying to your Lordships for suspension of such threatened charge, and also for suspension and interdict against the respondent, all as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer is willing to consign the amounts of

the said promissory notes, or to find caution acted in your Lordships' books in common form.

May it therefore please your Lordships *simpliciter* to suspend the said promissory notes and threatened charge and whole grounds and warrants thereof, and further, to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent from further assigning or otherwise transferring said promissory notes, or from parting with the same aye and until their validity and effect is ascertained in this process [if reduction intended to be brought insert], or in a relative process of reduction to be immediately brought by the complainer; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and sist of execution on consignation.
Answers lodged and parties heard.
Note passed, and, in respect of consignation, sist continued.

Note as to Bills alleged to be forged.—In the suspension of a bill alleged to be forged, in the order for intimation and service the charger is appointed to produce the bill charged on and the suspender to produce genuine subscriptions, in real transactions bearing his signature of date prior to the charge.

III.—PROCEDURE IN SUSPENSION WHEN JURATORY CAUTION ORDERED.

The Lord Ordinary, having heard counsel for the parties on the note and answers, allows the note to be amended to the effect of offering juratory caution; and this having been done at the bar, on juratory caution as now offered, sists execution and passes the note, appoints such caution to be found within the next fourteen days, and grants commission to the Sheriff Clerk, whom failing, the Sheriff Clerk Depute at to take the suspender's oath anent juratory caution.

[Form of Inventory.]

Inventory of the whole Effects belonging to [insert complainer's name, &c.].

Cash in hand,	£2	0	0
Balance in bank,	14	0	0
I. Stock in Shop.			
Wines,	17	0	0
Whisky in bulk,	13	0	0
Whisky and brandy in bottle,	7	0	0
Teas,	39	0	0
Ales and porter in bottle,	3	9	9
Flour, sugar, &c.,	5	16	0
Ales and porter in cask,	6	0	0
Jam, &c.,	6	8	0
Groceries,	37	5	0
Provisions,	9	0	0
	£143	18	9
II. Fittings in Shop.			
Fittings in shop of the value of	30	0	0
III. Book Debts,	60	0	0
IV. Goodwill,	250	0	0
	£458	18	9

V. Furniture in House.

Parlour—1 mantel mirror, 1 piano, 6 chairs, 1 couch, Singer's machine, 2 tables, 15 pictures, carpet and rug, fender and fire-irons.

Bedrooms—2 iron beds, 2 chests of drawers, 1 sofa, washstand and rail, carpets and rugs, fenders and fire-irons.

Kitchen—6 chairs, 1 arm-chair, 1 table, 3 rollers, mangle, fire-irons, fender, kitchen utensils.

(Sgd.)

I [insert complainer's name], hereby enact and bind myself not to dilapidate any of the property embraced by the foregoing inventory, and that I shall not dispose of the same, nor uplift any of the debts due to me without the consent of [insert respondent's name] or of his agent, or the authority of the Court, till the proceedings with regard to the note of suspension at my instance against the said shall have been finished, and until there shall have been an opportunity of doing diligence upon the bill in question in said note should same be found to be valid,

and also for any expenses that may ultimately be found due by me, and that under pain of imprisonment, or being otherwise punished as being guilty of fraud; under this provision, however, that, in respect to the stock in any shop, I will be allowed to use it as may be required in the ordinary course of my business, but I bind and oblige myself to replace the goods disposed of with goods of equal value, so that the quantity and value of the stock in said shop shall not be decreased, pending the present suspension. In Witness whereof, &c.

IV.—Suspensions and Interdicts (Specific Cases).

1. Suspension and Interdict by a Landed Proprietor against Persons alleged to have Trespassed on his Estate.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for

A. B., Proprietor of the Estate of
in the County of - *Complainer*,

against

C. D. and Others, *Respondents.*

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution and consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents, and each of them, from trespassing or entering upon the estate of lying in the county of belonging to the said complainer, and from inciting, employing, or requesting other persons to trespass or enter upon the said estate, and from destroying or injuring or interfering with the surface of the said estate, and from inciting, employing, or requesting other persons to do any of the things foresaid, and to grant interim

interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
No appearance made for respondent.
Note passed and interdict continued.

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2. SUSPENSION AND INTERDICT BY A PROPRIETOR AGAINST TRESPASS OR UNAUTHORISED GRAZING OF SHEEP ON HIS LANDS.

Unto the Right Honourable the Lords of Council and Session

Note of Suspension and Interdict for
A. B., of *Complainer*,
against
C. D. and Others, *Respondents*.

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that, in the whole circumstances, he is entitled to have this note passed, and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents, or any of them, and all others acting upon the authority or instructions of them, or any of them, from entering or trespassing upon the lands of the property of the complainer, and situated in the parish of and county of as also to interdict, prohibit, and discharge the said respondents from grazing sheep, cattle, horses, or any other live stock of whatsoever nature, upon the said lands; or to do otherwise in the premises as to your Lordships shall seem proper, and to grant interim interdict.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
No appearance entered.
Note passed and interdict continued.

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3. SUSPENSION AND INTERDICT BY A FARMER AGAINST HIS LANDLORD AND HIS GAMEKEEPER FROM DESTROYING TRAPS LAID BY HIM TO KEEP DOWN GAME ON THE FARM, OR FROM STOPPING RABBIT BURROWS, &c.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for

A. B., Farmer, residing at , *Complainer*,

against

C. D., of , and E. F., Gamekeeper, residing at , *Respondents.*

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent, C. D., and the respondent, E. F., and all others acting by the said C. D.'s authority, from trampling down or destroying snares or traps lawfully set by the complainer or any person duly authorised by him for the purpose of killing and taking ground game on the farm of , and from sprinkling paraffin or other noxious substance, or setting other snares or traps, or stopping up rabbit burrows, in such immediate proximity to snares or traps lawfully set by the complainer or any person authorised by him, so as to prevent ground game being so killed and taken, and from otherwise preventing the complainer or any person authorised by him from killing and taking ground game on the said farm, and from unlawfully obstructing or interfering with the complainer in

the exercise of their right to kill and take ground game on the said farm; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered; no interim interdict granted.
Answers lodged and parties heard.
Note passed without interdict.

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4. SUSPENSION AND INTERDICT BY A PROPRIETOR AGAINST A PERSON ANGLING ON HIS PROPERTY.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D., *Respondent.*

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondent, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent from angling in the water of , or any tributaries thereof, *ex adverso* of the lands and estate of , from any part of the said lands and estate of , in the parishes of , and county of ; or to do otherwise in the premises as to your Lordships shall seem proper, and meantime to grant interim interdict.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
No appearance made.
Note passed and interdict continued.

5. Suspension and Interdict by a Landlord against a Tenant Sub-letting part of a Farm or Selling the Grazing thereof. The Auctioneer called as a Party.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for

A. B., of in the County of , *Complainer*,

against

C. D., tenant of the farms of in the County of and E. F., Auctioneer, *Respondents*.

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have the note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent, C. D, from subletting all or any part of the farms of and other fields numbered as follows on the Ordnance Survey plan of numbers [insert numbers of process], all part of the complainer's lands of with the houses, yards, and others on the said lands, being the lands and others contained in the lease between the complainer and the respondent, C. D., dated the and registered in the books of Council and Session the , and to interdict, prohibit, and discharge the said respondent, E. F., from exposing or proceeding to expose to sale by public roup or otherwise the grazing on all or any part of the said farms of and other fields, and meantime to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

Procedure.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interdict continued.

6. Suspension and Interdict by a Landlord against a Tenant removing Crops before Rent is paid or Security found for it.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D., Farmer, *Respondent*.

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondent, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have the note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent from selling or removing his stock on the farm of aforesaid, and his crop of the present year, until he shall pay or find security to the complainer's satisfaction within such period as your Lordships may determine for payment of (1) the sum of £ being arrears of rent due by him as tenant of the farm of in the parish of and the shootings thereof, to the complainer in virtue of lease executed by him and them of date and with interest thereon from the till paid; (2) the sum of £ being the amount of rent of said farm and shootings which will become due by him to the complainer at the term of next, with the interest thereon at the rate of five per cent. per annum till paid, and to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

Procedure.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interim interdict continued.

7. Suspension and Interdict against Sale under a Decree on which a Charge had been given and a Poinding executed.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D., , E. F., Auctioneer, and
G. H., Sheriff-clerk, *Respondents.*

That the complainer has been charged at the instance of the said C. D. to make payment of the sum of £ , with interest thereon at the rate of five pounds per centum per annum from the day of , and £ of expenses, all as contained in extract decree for payment from the Sheriff Court books of and warrant thereon by the Sheriff of , dated at the day of in an action raised at the instance of the said C. D. against the complainer, and on the day of the said C. D. caused a poinding to be executed of the furniture, stocking, and effects belonging to the complainer in the farm house and on the farm of , and on the day of obtained from the Sheriff of a warrant to sell the said furniture, stocking, and effects, and appointing the sale to proceed at aforesaid, upon the day of , at o'clock, most wrongously and unjustly, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer is willing to find caution acted in your Lordships' books in common form, but that he considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of and to interdict, prohibit, and discharge the said C. D. by himself, or any other person on his behalf, from selling or taking any further steps with the view of selling [state

number] sheep and lambs, the property of the complainer, and at present pasturing on the said farm of [or any other effects belonging to the complainer], and also to interdict, prohibit, and discharge the said E. F. and G. H., or either of them, from selling or taking any part in selling the said sheep and lambs, or any part thereof [or any other effects belonging to the complainer]; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered; execution sisted and interim interdict granted on caution.

Answers lodged and parties heard.

Note passed and in respect caution found, sist and interim interdict continued.

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8. SUSPENSION AND INTERDICT AGAINST STOPPING UP A STREET OR OBSTRUCTING ACCESS THERETO.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D. and Others, *Respondents*.

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents from stopping up or discontinuing as a public street or thoroughfare the [state place] , and the passages or lanes leading to the said street from the respectively; and also from obstructing or otherwise appropriating or interfering with or authorising any

person or persons to obstruct, appropriate, or interfere with the said street called , or any part thereof, in any manner of way, and the passages or lanes leading thereto, or with the rights of access of the complainer to his property situated in aforesaid, through or by means of the said street, passages, or lanes, or any of them, and to grant interim interdict: or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered; no interim interdict.
Answers lodged and parties heard.
Note passed and interim interdict granted.

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9. SUSPENSION AND INTERDICT AGAINST BLASTING OPERATIONS NEAR DWELLING-HOUSE.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B. and Others, *Complainers*,
against
C. D., *Respondent*.

That the complainers are under the necessity of applying to your Lordships for suspension and interdict, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainers are willing to find caution acted in your Lordships' books for whatever damage or expense the respondents may sustain in case it should be found by your Lordships that they are liable for the same, but that they consider that in the whole circumstances of the case they are entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent and all others

acting for him from blasting rocks and stone by dynamite, powder, or other explosives at a point or points adjacent or near to the [state place] belonging to the complainers, or otherwise to interdict, prohibit, and discharge the said respondent and all others acting for him from blasting rock and stone by dynamite, powder, or other explosives at the point or points aforesaid in any manner whereby the premises known as may be injured structurally or otherwise, or whereby those who may from time to time reside in said premises may be exposed to danger or annoyance, and to interdict, prohibit, and discharge the respondent and all others acting for him from casting on the complainers' said premises, or any part thereof, any stone, pieces of rock, or other missiles or things, and to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interim interdict continued.

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10. SUSPENSION AND INTERDICT AGAINST INFRINGEMENT OF LETTERS PATENT.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for

The Company,
Limited, carrying on business at ,
and whose registered office is at ,
Complainers,

against

A. & B., Wholesale Manufacturers. [Re-London]

That the complainers are under the necessity of applying to your Lordships for suspension and interdict against the

said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainers consider that in the whole circumstances of the case they are entitled to have this note passed without caution or consignation, but if your Lordships should be of opinion that they are bound to do so, the complainers are willing to find caution acted in your Lordships' books for whatever damage or expense the said respondents may sustain in case it shall be found by your Lordships that they are liable for the same.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents, their servants and agents from infringing the letters patent, dated , No. granted to for improvements in (" "), and from making, exercising, selling, or offering for sale, using or exhibiting, or causing to be made, exercised, sold, used or exhibited (" ") which infringe the said letters patent; and to interdict, protect, and discharge the respondents from parting with any article now in their possession, custody, or power, which infringe the said letters patent; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interim interdict continued.

11. Suspension and Interdict—Infringement of Letters Patent.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for

The Company, Limited, incorporated under the Companies Acts, 1862 to 1893, and having their registered offices at , *Complainers*,

against

C. D. & Co., *Respondents*.

That the complainers are under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainers consider that, in the whole circumstances of the case, they are entitled to have this note passed, and interdict granted without caution or consignation, but, should your Lordships consider it necessary, they are willing to find caution acted in your Lordships' books for whatever damage or expense the said respondents may sustain in case it shall be found by your Lordships that they are liable for the same.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents, their partners, agents, and servants, and all other persons authorised by them, from infringing the letters patent, dated and sealed the and numbered granted to of chartered patent agent, for the invention of " " and from making, using, and exercising or vending, during the continuance of the said letters patent, the invention described therein, and in the specification filed in pursuance of the provisions thereof in the Great Seal Patent Office, on the day of and amended in accordance with the decision of the Comptroller-General, dated the and from making, using, exercising, letting for hire or vending any " "

described in the said specification, or in any manner substantially the same, and from infringing in any

other way the said letters patent, and to grant interim interdict: (And also to order the respondents and their partners, agents, servants, and others having their authority, to deliver to the complainers, or to messengers-at-arms, or to such other person as your Lordships may appoint, to take possession of all [specify infringing goods] belonging to, or in the hands, or under the control of the respondents, or of their partners, agents, or servants, or others having their authority, made according to or in the manner described in the said letters patent and relative specification, or in manner substantially the same, or otherwise in infringement of the said letters patent, and also of all letters, invoices, bills, business books, and other papers and documents belonging to, or in the hands of, or under the control of them, or of any of them relating to the said [specify infringing goods], and to retain and preserve the same until the issue of this application, and thereafter to grant warrant to the complainers to destroy or otherwise dispose of them as your Lordships may direct, and for the said purposes to enter upon or into any land or building in the occupation or possession of the respondents, or of said other persons, and, if needful, to open all shut and lockfast places; and to pronounce an interim order, or otherwise to grant interim warrant, to the above effect; or at all events to grant interim warrant to messengers-at-arms to take a full and complete inventory of all such [specify infringing goods] and also of all such letters, invoices, bills, business books, and other papers and documents as aforesaid, and for the said purpose to enter upon or into any land or building in the occupation or possession of the respondents, or of said other persons, and, if needful, to open all shut and lockfast places); or to do otherwise as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interim interdict continued.

Note.—The second portion of the prayer of the note which has been put in brackets for possession, retention, disposal, &c., of manufactured goods said to be an infringement of patent, or for taking an inventory of alleged infringing goods, &c., sold or in possession of respondents, or for taking possession of invoices, &c., although stated to be often granted in English Courts in patent cases, has never yet been given effect to in Scotland.

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12. Suspension and Interdict by Wine and Spirit Merchants against Aerated Water Manufacturers and Bottlers to prevent them tampering with Complainers' Bottles and issuing them filled with Respondents' Beer.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for

A. B. & Co., Wholesale Wine and Spirit Merchants, carrying on business at and C. D., the sole partner of said firm, *Complainers*,

against

E. F., Aerated Water Manufacturers and Bottlers, *Respondents*.

That the complainers are under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainers consider that in the whole circumstances of the case they are entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents (1) from tampering with the complainers' bottles by sand-blasting thereon the name of the respondents' firm, and (2) from re-issuing the complainers' said bottles filled with the respondents' bottled beer, and to grant interim interdict, and to find the complainers entitled to expenses; or to do otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interim interdict continued.

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13. SUSPENSION AND INTERDICT BY AERATED WATER MANUFACTURER AGAINST A RESPONDENT, WHO IS A BOTTLER OF AERATED WATERS, USING COMPLAINER'S BOTTLES LENT TO HIS (COMPLAINER'S) CUSTOMERS, BY FILLING THEM WITH HIS (RESPONDENT'S) AERATED WATERS.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against

the company carrying on business at and C. D., the only known partner of said company, and as an individual, *Respondents*.

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation, yet, nevertheless, if your Lordships shall consider it necessary, he is willing to find caution acted in your Lordships' books for whatever damage or expenses the said respondents may sustain in case it shall be found by your Lordships that he is liable for the same.

May it therefore please your Lordships to suspend the proceedings complained of and to interdict, prohibit, and discharge the respondents and all others acting under them or by their instructions or by their authority from filling with aerated waters and issuing to the public, or otherwise using for their own purposes, or as their property, bottles lent by the complainer to his customers and belonging solely to the complainer, and impressed, moulded, or otherwise marked with the name of the

complainer so as to be easily identified as the property of the complainer, and to grant interim interdict in the terms above mentioned ; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted on caution.

Answers lodged and parties heard.

Note passed and, caution having been found, interim interdict continued.

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14. SUSPENSION AND INTERDICT AGAINST RESPONDENT PROCEEDING WITH AN APPLICATION TO TRANSFER A LICENCE OF A PUBLIC-HOUSE.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., Wine and Spirit Merchant, *Complainer*,
against
C. D., Wine and Spirit Merchant, *Respondent*.

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondent, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation, yet, nevertheless, if your Lordships shall consider it necessary, he is willing to find caution acted in your Lordships' books for whatever damage or expense the said respondents may sustain in case it shall be found by your Lordships that he is liable for the same.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent from proceeding with an application lodged by him on or about for a transfer of the certificate for licence for the public-house at for the year presently current, and at present held by the

complainer, in terms of the Licensing (Scotland) Act, 1903, aye and until the respondent finds caution for or makes consignation of the sum of £
being the balance (after deduction of a sum of £ already deposited in the
Bank at in the joint names of
on behalf of
the complainer, and
on behalf of the respondent), of the sum of £ , being the agreed on price at which the complainer, by missives of sale, dated
, agreed to sell to the respondent, conditionally upon his obtaining a transfer of the said certificate of licence granted to ,
All and Whole the property belonging to the complainer at aforesaid, known as
, together with the goodwill of the licensed business carried on by the complainer there, and to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interdict continued.

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15. SUSPENSION AND INTERDICT BY A TRUSTEE UNDER A VOLUNTARY TRUST DEED FOR CREDITORS AGAINST THE GRANTER, TO HAVE HIM PREVENTED FROM INTERFERING WITH THE ESTATE CONVEYED BY THE TRUST DEED.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., Trustee under Trust Deed, dated , granted by C. D. for behoof of his creditors, *Complainer*,
against
The said C. D., *Respondent.*

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said

respondent, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of and to interdict, prohibit, and discharge the said respondent from interfering with, realising, taking possession of, or in any way disposing of the whole or any part of the estates, heritable and moveable, real and personal, which belonged to the said C. D. as at the said day of , including his entire stock-in-trade then in the premises occupied by the said C. D., situated in , or wherever the same might be, and also the said C. D.'s household and office or warehouse furniture, goods, gear, effects, sums of money and debts whatsoever, pertaining and belonging or due and indebted to him as at the said day of , together with the documents, vouchers, and instructions thereof, and all action and execution that had followed or was competent to follow thereon, meantime to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted without caution.

Answers lodged and parties heard.

Note passed and interdict continued.

16. Suspension and Interdict against a Trustee under a Voluntary Trust Deed holding a Meeting of Creditors and interfering with a Licensed Business and the Licence to the same.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D., as Trustee acting under a pretended Trust Deed for behoof of Creditors granted by the Complainer. *Respondent.*

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondent, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent from acting as trustee under a pretended trust deed alleged to have been granted by the complainer in favour of the respondent for behoof of the complainer's creditors, dated on or about , and in particular, from holding a meeting of persons alleged to be creditors of the complainer, within his chambers in , on , the day of , at o'clock, or at any other time; from exposing or selling or endeavouring to sell the business presently carried on by the complainer within the for which the complainer holds a licence from the Justices of the Peace for ; or from interfering with the complainer in the conduct of the said business in any manner of way, and to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interdict continued.

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17. SUSPENSION AND INTERDICT AGAINST PROCEEDING WITH AN ARBITRATION UNDER LANDS CLAUSES ACT.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D., *Respondent*.

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondent, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation, nevertheless, he is willing to find caution acted in your Lordships' books for whatever damage or expense the said respondent may sustain, in case it shall be found by your Lordships that he is liable for the same.

May it therefore please your Lordships to suspend the proceedings complained of and to interdict, prohibit, and discharge the said respondent from following forth, or proceeding under, or in any way acting upon an alleged nomination of arbiter by , dated the , in proceedings under the "Lands Clauses Consolidation (Scotland) Act, 1845," between the said and the complainer, and to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interdict continued.

18. Suspension and Interdict by a Corporation for the purpose of interdicting Respondent from acting or proceeding with a Claim under an Arbitration Clause in a Contract, and against the Arbiter from proceeding therewith, or issuing a Decree or Finding thereon.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
The Lord Provost, Magistrates, and Council of
Complainers,
against
C. D., Builder, and E. F., Surveyor, *Respondents*.

That the complainers are under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainers consider that in the whole circumstances of the case they are entitled to have the note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondent, C. D., from following forth or otherwise proceeding with or under a pretended claim for the said C. D. to the other respondent, E. F., as arbiter, nominated in a contract, dated entered into between the said respondent, C. D., and the complainers, and, further, to interdict, prohibit, and discharge the said E. F. from acting as arbiter, and from issuing any interlocutor or decreet-arbitral in relation to said claim, or in relation to any matters therein referred to, or in relation to any other claims by the said C. D. against the complainers under the said contract, and from proceeding under or in pursuance of any order or pretended order, made or issued by the said E. F., as arbiter foresaid, and to grant interim interdict as above set forth; or to do

otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation.
Answers lodged and parties heard.
Note passed.

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19. SUSPENSION AND INTERDICT AGAINST A RAILWAY COMPANY, WHICH HAS ALSO ACQUIRED A DISTRICT RAILWAY COMPANY, PROCEEDING WITH NOTICES TO TREAT.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B. and Others, *Complainers*,
against
The Railway Company, incorporated by Act of Parliament, and also against the Railway Company, incorporated by the District Railway Act, , for any interest they may have in the premises, *Respondents*.

That the complainers are under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainers consider that in the whole circumstances of the case they are entitled to have the note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondents, the Railway Company, as coming in room and place of the respondents, the and District Railway Company under and in virtue of the Railway Act from prosecuting or following forth (First) a pretended notice, dated signed by as secretary of, and on behalf of the respondents, the District

Railway Company, by which the said respondents notified the complainers that they were authorised by the District Railway Act to purchase and take certain land or property in the county of belonging to the complainers, and that the said respondents, the District Railway Company, required to purchase and take the land or property delineated and coloured on a map or plan delivered to the complainers with said notice, and herewith produced, containing or thereby, and which land or property is situated in the parish of in the county of and is distinguished on the plans and in the book of reference deposited with the Sheriff-clerk of said county, in the month of as relative to the Bill which was afterwards passed into the said District Railway Act by the numbers to inclusive, and (Second) another pretended notice, also dated signed by the said as secretary of, and on behalf of the respondents, the District Railway Company, by which the said respondents notified the complainers that they were authorised by the said District Railway Act to purchase and take certain land or property in the said county of belonging to the complainers, and that the said respondents, the District Railway Company, required to purchase and take (1) the land or property delineated and coloured on a map or plan delivered to the complainers with said last-mentioned notice, and herewith produced, containing imperial measure or thereby, (2) the land or property and railway sidings delineated and coloured on the said map or plan containing or thereby, and (3) the land or property and railway sidings delineated and coloured on the said map or plan, containing imperial measure or thereby, and which lands or properties

are situated in the parish of in the foresaid county, and which lands or properties are in said notice alleged to be distinguished on the said deposited plans, and in the said deposited book of reference, by the following numbers, viz.:—(1) the lands coloured on the said map or plan by the numbers (2) the land and railway sidings coloured on the said map or plan by the numbers and (3) the land and railway sidings coloured on the said maps or plan by the numbers and, in any event, to interdict, prohibit, and discharge the respondents, the Railway Company, as coming in room and place as aforesaid, from prosecuting or following forth the said pretended notices, or either of them, to the effect of acquiring compulsorily from the complainers the portions of the land or property belonging to them, delineated and coloured and on the said map or plans, or either of them, other than the portion thereof distinguished by the number , and coloured on the said first-mentioned map or plan, and to interdict, prohibit, and discharge the said last-mentioned respondents from doing any act or taking any proceedings for the purposes foresaid, and to grant interim interdict; or to do further or otherwise in the premises as to your Lordships shall appear proper.

According to Justice, &c.

PROCEDURE.

Intimation.

1st Order—Intimation, interdict reserved.

2nd Order—Hearing appointed on answers.

3rd Order—Passing note, &c., as follows:—

"The Lord Ordinary having heard counsel upon the note of suspension and answers, the respondents undertaking by their counsel not to follow forth the notices to treat referred to in the prayer of the note without giving one week's previous notice to the complainers, in order that they may, if so advised, move for interim interdict, passes the note and finds it unnecessary to dispose of the question of interim interdict."

20. Suspension and Interdict against Respondent using Name of Complainer's Firm, &c.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for

A. B., Proprietor of [state business] and presently residing at , *Complainer*,

against

C. D. and E. F., some time carrying on business at and now at in the county of , *Respondents.*

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said C. D. and E. F., as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances he is entitled to have this note passed and interdict granted without caution, but he is willing to find caution should your Lordships consider it necessary.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondents and their agents, servants, and all others acting for them (First) from issuing business cards, bills, placards, and any other notices, and publishing or causing to be published notices or advertisements in the terms set out in statements and hereto annexed, or terms of a like import and effect, and from exhibiting or using the name of [state name], or any name framed so as to be a colourable imitation of the name by which the complainer's [state business] is commonly known; (Second) from issuing business cards, bills, placards, and any other notices, and publishing or causing to be published notices or advertisements in terms set out in statement hereto annexed, or terms of a like import and effect, and from stating that the respondents [fill in statement]; (Third) from using said names and statements in the said manner on their vehicles, carts, notepaper, invoices, memoranda, bills, placards, accounts, business books, and all other papers,

documents, and effects of whatever kind in connection with their business as [state business]; and (Fourth) from obliterating and removing or otherwise interfering with notices, bills, placards, or other advertisements posted on hoardings, walls, buildings, or other structures by the complainer or his servants in connection with his said business as [state business], and to grant interim interdict; or to do further or otherwise herein as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interdict continued.

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21. SUSPENSION AND INTERDICT AGAINST THE DISSOLUTION OF A FIRM OF WHICH COMPLAINER IS A PARTNER.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D., *Respondent.*

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said C. D., as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances he is entitled to have this note passed and interdict granted without caution, but he is willing to find caution should your Lordships consider it necessary.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent from dissolving or attempting to dissolve the firm of ,

of which the complainer and respondent are sole partners, excepting upon the notice and subject to the conditions and provisions specified and contained in the contract of copartnery entered into between the complainer and respondent, dated , and from advertising or publishing or attempting to advertise or publish any notice of dissolution or pretended dissolution of said firm until the said dissolution shall have been accomplished in terms of the said contract of copartnery, and to grant interim interdict; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interdict continued.

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22. SUSPENSION AND INTERDICT AGAINST DIRECTORS OF A COMPANY ENTERING NAMES ON THE TRANSFER REGISTER.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B. and Others, *Complainers*,
against
C. D., Limited, incorporated under the Companies Acts, having their registered office at , *Respondents*.

That the complainers are under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainers are willing to find caution acted in your Lordships' books for whatever damage or expense the said respondents may sustain, in case it shall be found by your Lordships that they are liable for the same, but they

consider that in the whole circumstances of the case they are entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents, their directors, clerks, agents, and all other persons acting on their behalf, from entering on the share register of the said company of the names of the complainers, the said , or the names of , or any of them, as proprietors or proprietor of shares of the said , numbered said shares to inclusive, being the shares contained in a transfer, dated , bearing to be granted by to and in favour of the said respondents, and the survivors or survivor of them, and to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered.
Answers lodged and parties heard.
Note passed.

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23. SUSPENSION AND INTERDICT AGAINST A COMPANY HOLDING A MEETING AND PASSING CERTAIN SPECIAL RESOLUTIONS.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
The Company, Limited, having its registered office at and C. D., *Respondents*.

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer is willing to find caution acted in your Lordships' books in common form, but he considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondents from holding or purporting to hold an extraordinary general meeting of the said company at their said registered address, on the day of at noon, in terms of a notice issued by the respondent, C. D., dated for the purpose therein set forth of confirming special resolutions or pretended special resolutions—(1) [state resolutions] and to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered.
Answers lodged and parties heard.
Note passed.

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24. SUSPENSION AND INTERDICT AGAINST THE MAGISTRATES AND COUNCIL OF A ROYAL BURGH FROM PROCEEDING WITH AN ELECTION OF A MEMBER FOR TOWN COUNCIL.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against

The Provost, Magistrates, and Councillors of the Royal Burgh of and the Provost of said Royal Burgh, and Returning Officer at the Municipal Elections of said Royal Burgh about to be held on , *Respondents.*

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said

respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation, nevertheless, he is willing to find caution acted in your Lordships' books for whatever damage or expense the said respondents may sustain in case it shall be found by your Lordships that he is liable for the same.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents from proceeding at the forthcoming municipal election of town councillors of the said royal burgh of on the day of with the election of a town councillor of said royal burgh, as in room of the complainer and on the footing that he is a retiring member of said town council, as on the said day of and from electing any other member of said town council to the office of honorary treasurer thereof, in room of the complainer and on the footing that he retired from said office on said day of and to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered.
Answers lodged and parties heard.
Note passed.

25. Suspension and Interdict against a Trustee under a Voluntary Trust Deed which has been revoked by the Granter (Complainer) against the Trustee taking possession of Estate. (Auctioneers called as parties.)

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for

A. B., and as claiming to be Trustee under a Trust Deed granted by the Complainer in his favour on or about and , Auctioneers and Valuators, , *Respondents.*

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interim interdict granted without caution or consignation, but if upon advising the same your Lordships should be of opinion that he is bound to do so, the complainer is willing to find caution acted in your Lordships' books for whatever damage or expense the said respondents may sustain in case it shall be found by your Lordships that he is liable for the same.

May it therefore please your Lordships to suspend the whole proceedings complained of, and to interdict, prohibit, and discharge the whole respondents or any other person or persons acting or claiming or pretending to act under the authority of them or any of them from removing, interfering with, taking possession of, selling or disposing of, or in any other way dealing with any of the estate and effects of the complainer, under or by virtue of a trust deed granted by the complainer in favour of the said on or about and from acting under the said trust deed in any other manner of way whatsoever; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interdict continued.

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26. SUSPENSION AND INTERDICT AGAINST PROCEEDING WITH A PETITION FOR CESSIO AND AGAINST PUBLISHING SAME IN *Gazette*.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D., *Respondent*.

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the said respondent, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondent from proceeding further with a petition for cessio in the Sheriff Court of at at the instance of the respondent against the complainer, and with a deliverance thereon, dated the day of and to grant interdict against the respondent publishing a notice in the *Edinburgh Gazette* intimating that said petition has been presented, and to interdict the Keeper of the *Edinburgh Gazette* from publishing said notice, and to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered.
Answers lodged and parties heard.
Note passed and interim interdict granted.

27. Suspension and Interdict against the Defender in a Sheriff Court Action who had obtained Decree of Absolvitor, with costs, and who had charged the Pursuer (Complainer) and poinded his Goods.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D., *Respondent.*

That the complainer [state date] has been of this date charged at the instance of the respondent, by virtue of a pretended extract decree of absolvitor from the Sheriff Court books of , and warrant thereon by the Sheriff of , bearing to be dated at , the day of , and extracted the day of , and alleged to have been obtained in an action raised before the Sheriff Court of , at the instance of the complainer against the said respondent, to make payment of the sum of £ sterling, with £ , alleged to be the legal interest thereon, and , the alleged dues of extracting and recording said decree, all as alleged to be contained in said pretended extract decree, warrant thereon, and charge, within seven days next after the date of the said charge, under the pain of poinding and imprisonment if the same be competent: And that, following upon the said charge, a pretended poinding of the complainer's goods was executed at by the respondent on the day of . The said charge and poinding are wrongous and unjust, and the complainer is under the necessity of applying to your Lordships for suspension and interdict against the respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances of the case he is entitled to have this note passed without caution or consignation.

May it therefore please your Lordships *simpliciter* to suspend the proceedings complained of, and also to suspend the said pretended charge and whole grounds

and warrants thereof, and to interdict, prohibit, and discharge the respondent and all others from selling the goods, the property of the complainer, pointed, or pretended to be pointed, at the respondent's instance in the complainer's premises at aforesaid, on the day of and, further, to interdict the respondent from proceeding in any manner of way with any further diligence against the complainer upon the said charge or pointing, and to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict.
Answers lodged and parties heard.
Note passed and interdict continued.

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28. SUSPENSION AND INTERDICT BY A HUSBAND AGAINST HIS WIFE, PRAYING FOR INTERDICT AGAINST HER REMOVING THE CHILDREN OF THE MARRIAGE OUT OF THE JURISDICTION OF THE COURT.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for

A. B., residing at *Complainer*,

against

C. D., residing at in the County of , England, *Respondent*.

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the respondent, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent from removing

out of the jurisdiction of the Court [state names of children] the children of the marriage between her and the complainer, and, in the event of the said children having been removed out of the said jurisdiction prior to the service of this note, to ordain the respondent to bring the said children back within the jurisdiction of the Court, and to grant interim interdict; or to do further or otherwise in the premises as your Lordships shall think proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered.
Answers lodged and parties heard.
Note passed.

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29. SUSPENSION AND INTERDICT BY TRUSTEES ON AN ESTATE AGAINST THE RESPONDENTS COLLECTING RENTS.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for

A. B. and Others, trustees acting under a disposition of the heritable subjects hereinafter mentioned, granted by residing in in favour of the said A. B. and Others as trustees therein mentioned, dated and recorded in the Division of the General Register of Sasines applicable to the county of , *Complainers*,

against

C. D. and Others, *Respondents*.

That the complainers are under the necessity of applying to your Lordships for suspension and interdict against the said respondents, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainers consider that in the whole circumstances of the case they are entitled to have this note passed, and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit,

and discharge the said respondents from collecting and uplifting at the term of next, 19 and at all subsequent terms until further orders of the Court, the rents of the subjects forming Nos. and from in any way molesting or interfering with the tenants and occupiers of the said subjects, and meantime to grant interim interdict; or to do otherwise in the premises as your Lordships shall think proper.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interdict continued.

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30. SUSPENSION AND INTERDICT BY A BENEFICIARY ON AN EXECUTRY ESTATE, AGAINST THE EXECUTOR-DATIVE SELLING CERTAIN FURNITURE BELONGING THERETO, AND WHICH IS CLAIMED BY THE RESPONDENT AS PART OF THE ESTATE.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D., Executor-Dative *qua* next-of-kin of the Deceased E. F., who resided at , *Respondent.*

That the complainer is under the necessity of applying to your Lordships for suspension and interdict against the respondent, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer considers that in the whole circumstances he is entitled to have this note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondent from selling, alienating, or disposing, or causing to be sold, alienated, or disposed of in any manner of way, the following articles of household furniture situated in ,

the former dwelling-house of the said deceased E. F., and which articles of furniture belong to the trust estate of the late G. H., who resided at , in which estate the complainer is a beneficiary, viz. :—[state articles], and which articles of furniture have been included by the respondent in the inventory given up by him as executor-dative *qua* next-of-kin of the personal estate of the late C. D., and to which he obtained confirmation, and to grant interim interdict: or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered and interim interdict granted.
Answers lodged and parties heard.
Note passed and interim interdict continued.

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31. SUSPENSION AND INTERDICT AGAINST A THREATENED PROTEST OF A BILL AND A CHARGE THEREON.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
A. B., *Complainer*,
against
C. D., *Respondent*.

That the complainer is threatened to be charged at the instance of the said respondent to make payment of the sum of £ sterling, being the principal sum contained in a bill of exchange drawn by the respondent upon the complainer, dated , and payable three months after date at the , most wrongously and unjustly, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainer is willing to find caution acted in your Lordships' books for the principal sum and interest

contained in said bill of exchange, and for whatever damage or expense the said respondent may sustain, in case it shall be found by your Lordships that they are liable for the same.

May it therefore please your Lordships *simpliciter* to suspend the said threatened charge and whole grounds and warrants thereof, and to interdict, prohibit, and discharge the respondent from protesting or proceeding with any diligence against the complainer under or by virtue of said bill of exchange, and to interdict the keeper of the register of deeds and protests from receiving for registration in the books of the Lords of Council and Session the within-mentioned protest, and meantime to grant interim interdict; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered.
Answers lodged and parties heard.
Note passed.

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32. SUSPENSION AND INTERDICT BY MAGISTRATES OF A ROYAL BURGH AGAINST DIGGING AND TAKING AWAY SAND AND GRAVEL FROM FORESHORE.

Unto the Right Honourable the Lords of Council and Session.

Note of Suspension and Interdict for
Provost, Magistrates, and Councillors of the Burgh of
as such, and as representing the said Burgh and community thereof, with concurrence and consent of the said Provost, Magistrates, and Councillors, as Commissioners under the Harbour Act, , *Complainers*,
against
A. B., Contractor, *Respondent.*

That the complainers are under the necessity of applying to your Lordships for suspension and interdict against the respondent, as will appear to your Lordships from the annexed statement of facts and note of pleas-in-law.

That the complainers are willing to find caution acted in your Lordships' books for whatever damage or expense the respondent may sustain in case it shall be found by your Lordships that they are liable for the same, but consider that in the whole circumstances they are entitled to have the note passed and interdict granted without caution or consignation.

May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondent, or others acting through or for him, or on his behalf, or under his authority, from digging or taking away, or causing to be dug or taken away, sand and gravel, shingle or stones, from the foreshore of the Firth of *ex adverso* of the lands and territory of the burgh of extending from the on the east, to the on the west, or any part thereof, and meantime to grant interim interdict; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation ordered.

Answers lodged and parties heard.

Note passed, but no interdict imposed, as caution was undertaken to be found by respondent to pay for all sand taken till case disposed of.

V.—BONDS OF CAUTION.

1. BOND OF CAUTION IN SUSPENSION AND LIBERATION.

I, A. B. [name, designation, and address], considering that C. D. [name, designation, and address], presently a prisoner in the prison of , complainer, on the day of , presented to the Lords of Council and Session a note of suspension and liberation against E. F. [name, designation, and address], respondent, and that on advising the said note Lord , Ordinary, of the

same date, *inter alia*, granted interim liberation to the said A. B., complainer, as craved, on condition that he should find caution for the sum of £ stg., that he would return to prison in the event of the said note being refused. And seeing that I, the said A. B., am willing to act as cautioner and surety for the said C. D., complainer, in the premises under the foresaid interlocutor: Therefore I, the said A. B., bind and oblige myself, my heirs, executors, and successors, as cautioner and surety acted in the books of Council and Session, for the said C. D., that in the event of the said note of suspension and liberation being refused, and the interim liberation granted by said interlocutor being recalled, the said C. D. shall forthwith return to the prison of , from which he has now been liberated, and that in the event of his failing so to return within eight days from the date of a final interlocutor by the Lord Ordinary, or the Court refusing the said note of suspension and recalling the said interim liberation now granted, that the said C. D. shall pay to the said E. F., respondent, or to any other person to whom he shall be ordained to pay the same, the foresaid sum of £ stg., due in respect of said failure, and which sum will be applied towards paying any debt or expenses found due and payable by the said C. D. to the said E. F., respondent, or to any other person on his behalf. Consenting to the registration in the books of Council and Session that letters of horning and allotted execution may pass upon a decreet to be interponed hereto in common form, and to that effect constitute procurators.—In witness whereof.

Attestation.

I [name, designation, and address], do hereby not only certify and attest the sufficiency of the within-designed A. B. as cautioner in manner within expressed, but also bind and oblige myself, my heirs, executors, and successors as cautioners and surety *subsidiarie* along with him for the within-designed complainer, in manner within specified: And I consent that this attestation be recorded along with the within bond in terms of the clause of registration therein contained, and to the effect within mentioned, and for that purpose constitute the procurators within named.—In witness whereof.

Certificate by Justice of the Peace or Magistrate.
(To be holograph, dated, and signed.)

I, one of His Majesty's Justices of the Peace for ; [*or*, one of the Magistrates of as the case may be], hereby certify that the within-designed cautioner and attestor [name them] are habit and repute responsible for the obligations contained in the within bond.

[A. B., J.P., or Magistrate.]

[Place and date.]

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2. Bond of Caution in Suspension.

I [insert name of cautioner], bind and oblige heirs, executors, and successors as cautioners and surety, acted in the books of Council and Session, for [insert complainer's name and designation] that he shall pay to [insert respondent's name] or to any other person to whom shall be ordained to as stated in a note of suspension between the said parties, presented on the day of nineteen hundred years; and that, in case it shall be found by the Lords of Council and Session that ought so to do, after discussing the passed note of suspension: and also, that payment shall be made of whatever sum the said Lords shall modify in name of damages, and expenses in case of wrongous suspending. Consenting to the registration hereof in the books of Council and Session, that letters of horning and all other execution may pass upon a decreet to be interponed hereto, in common form; and for that end constitute procurators.—In witness whereof, these presents, written by to the Clerk of the Bills, so far as not printed, are subscribed.

Attestation.

I [insert name, &c., of attestor], do hereby not only certify and attest the sufficiency of the within-designed

as cautioner , in manner within expressed, but also bind and oblige heirs, executors, and successors, as cautioners and surety *subsidiarie* along with for the within-designed complainer , in manner within

specified: And consent that this attestation be recorded along with the within bond, in terms of the clause of registration therein contained, and to the effect within mentioned; and for that purpose constitute the procurators within named.—In witness whereof, these presents, written on the back of the said bond by

in so far as the same are not printed, are subscribed.

Form of certificate to be signed by a Justice of Peace or Magistrate.

[Place and date.]

I, one of His Majesty's Justices of the Peace for the county of ; [*or*, one of the Magistrates of , as the case may be], hereby certify that I know

the within-designed cautioner [*or* cautioners], and attestor [*or* attestors], and that he is [*or*, they are] habit and repute responsible for the obligations contained in the within bond.

[A. B., J.P., or Magistrate.]

[Place and date.]

The certificate, of which the above is the form, to be holograph of the Justice of the Peace, and to be written immediately below this, between the two ruled lines.

Note for filling up the testing clause.

Cautioner's name and designation.

Attestor's name and designation.

Place and date of signing by cautioner and attestor.

Witnesses' names and designations.

3. Bond of Caution in Suspension and Interdict.

I [name of cautioner], bind and oblige myself, my heirs, executors, and successors, as cautioners and surety, acted in the books of Council and Session for [insert name, &c., of complainer], that he shall pay to [insert respondent's name and designation], or to any other person to whom he shall be ordained, to pay whatever sum the Lords of Council and Session shall modify and award in name of damages, in case of wrongous interdicting, in a note of suspension and interdict between the said parties, presented upon the day of Nineteen hundred and years; and that, in case it shall be found by the Lords of Council and Session that ought so to do, after discussing the passed note of suspension and interdict; and also, that payment shall be made of whatever sum the said Lords shall modify in name of damages and expenses, in case of wrongous suspending, consenting to the registration hereof in the books of Council and Session, that letters of horning and all other execution may pass upon a decreet to be interponed hereto, in common form; and for that end constitute procurators.—In witness whereof, these presents, written by Clerk of the Bills, so far as not printed, are subscribed.

Attestation.

I [name and address of attestor], do hereby *not only* certify and attest the sufficiency of the within-designed as cautioner, in manner within expressed, *but also* bind and oblige heirs, executors, and successors, as cautioners and surety *subsidiarie* along with for the within-designed complainer, in manner within specified: And consent that this attestation be recorded along with the within bond, in terms of the clause of registration therein contained, and to the effect within mentioned; and for that purpose constitute the procurators within named.—In witness whereof, these presents, written on the back of the said bond by in so far as the same are not printed, are subscribed.

Form of certificate, to be holograph of, and dated and signed by, a Justice of Peace or Magistrate.

I, one of His Majesty's Justices of Peace for the County of ; [*or*, one of the Magistrates of , as the case may be], hereby certify that the within-designed cautioner and attestor [*or*, cautioners and attestors], is [*or* are] habit and repute responsible for the obligations contained in the within bond.

[A. B., J.P., or Magistrate.]

[Place and date.]

The certificate, of which the above is the form, to be holograph of the J.P., and to be written immediately below this, between the two ruled lines.

Note for filling up the testing clause.

Cautioner's name and designation.

Place and date of signing.

Witnesses' names and designations.

VI.—Points in Suspensions, and Suspensions and Interdicts, and Liberations.

1. Suspension is usually of a charge on a registered bond, decree, or the extract registered protest of a bill.

2. In such cases caution or consignation should be offered if a sist of diligence is desired when service of note is ordered.

3. If no caution offered the usual order in a suspension of a decree or registered bond or protest is for service only.

4. If caution or consignation is offered complainer has fourteen days within which to find it.

5. Sist of execution only takes effect when caution is found or consignation is made, and the time for lodging answers to the note of suspension only then begins to run.

6. Respondent can object to the sufficiency of caution in bond. If objection is taken by the respondent, a letter should be addressed to the Clerk of the Bills formally stating the objections. The same fall to be disposed of by the Clerk of the Bills, whose decision is subject to the review of the Lord Ordinary.

7. Time for finding caution may be prorogated on cause shown.

8. If caution is not found note will be refused. This is done by the respondent lodging a note in process, and intimating same to the complainer, or by enrolling the case in the Bill Chamber motion roll in Court if in session, and in the daily roll made up in Bill Chamber if in vacation. When the note is refused the complainer is found liable in expenses to the respondent, and on the interlocutor becoming final (fourteen days) the respondent can order extract of the decreet for expenses. This extract is prepared and issued by the Clerk of the Bills.

9. When answers are intended to be lodged appearance should first be entered for respondent in the Roll of Suspensions kept in Bill Chamber.

10. When answers are lodged, and a hearing on the note and answers is craved by either party, a formal note should be lodged in process to that effect, and a copy sent to the other side. A certificate of intimation of the note to opposite agent falls to be endorsed on the back hereof. An order is then written appointing a hearing on the note and answers, and the case is put out in the Bill Chamber roll for hearing.

11. Answers are not allowed to be borrowed up from the process until such a note is lodged and hearing ordered.

12. When answers lodged and no hearing is desired by either party, the process is sent to the Lord Ordinary for disposal.

13. The Lord Ordinary may, on advising note and answers (when no hearing has been asked), pass or refuse the note, and if the former, can sist diligence either with or without caution or consignation, or he may order a hearing

if he deems this necessary, and then dispose of the note by passing or refusing it.

14. The interlocutor disposing of the note can be reclaimed against within fourteen days.

15. If the note is passed and sist of diligence granted on caution or consignation, or upon any other condition, the complainer has fourteen days from date of order within which to find caution or consignation, or to fulfil any other condition imposed.

16. If the complainer fail to find caution after the note has been passed upon this condition, or to fulfil any other condition imposed, the respondent can then apply to the Clerk of the Bills for a certificate of no caution, or other non-fulfilment of condition imposed. The respondent's agents write the complainer's agents giving formal notice of their intention to apply to the Clerk of the Bills for a certificate of no caution. After forty-eight hours they present at the Bill Chamber a short copy of the note (without statement of facts or pleas-in-law), with a copy of the interlocutor ordering caution or consignation, or imposing any other condition annexed, certified by the Clerk of the Bills. The Clerk of the Bills writes his certificate of no caution or of non-compliance on the copy note, which is lodged in process. An order is then pronounced by the Lord Ordinary finding complainer liable in expenses (in respect of the certificate), and this operates as a dismissal of the note. This interlocutor cannot be reclaimed against.

17. Latterly, instead of a certificate of no caution being procured as the mode of getting a suspension refused, it has been the practice during the discussion of the note and answers to ordain the complainer to find caution within fourteen days, and continue the cause. If caution is found within the time allowed the note is passed and sist or interdict granted or continued. But if caution is not found the note is refused in respect of no caution, and the complainer found liable in expenses. This interlocutor cannot be reclaimed against.

18. The rules given above as to caution apply *in omnibus* in regard to consignation. When consignation is made the consignation receipt is lodged in process, borrowed up, and transmitted to the office of the Accountant of Court, and a copy lodged in process.

19. The only case in which the Lord Ordinary can award expenses in the Bill Chamber in a suspension is when the note is refused or dismissed, or on a certificate of no caution as in No. 16.

20. The following are the provisions of the Act of Sederunt of 1838, as to amending notes of suspension;—

Sec. 4. Amendment of note.—In all notes of suspension, suspension and interdict, or liberation, presented without caution, or on juratory caution, or on consignation, it shall be competent to the party, at any time before such note shall be advised upon answers, to amend his note, to the effect of offering juratory caution, in the case where no caution has been previously tendered, or consignation, or full caution, as the case may be, by lodging a minute to that effect, duly intimated to the agent for the opposite party; or he may afterwards correct the same, with special leave of the Lord Ordinary or the Court, given after hearing both parties on this point; provided always, when notes of suspension are so amended, that it shall be in the power of the Lord Ordinary and the Court to give any order as to the expenses occasioned by the presentment of the bill in its original shape that may appear to them to be just, with power to their Lordships also to limit the time for finding caution or making consignation to such period as shall appear to be proper in the circumstances of the case; and if any note, as thus corrected, is afterwards refused for want of the caution or consignation offered, no second note to the Lord Ordinary shall be competent, as allowed in certain other causes by sec. 7 of this Act.

Sec. 7. Second notes of suspension.—When any note of suspension, or of suspension and interdict, or liberation, shall, either during session or vacation, be refused, in respect that caution has not been offered or found, or upon any ground not on the merits; and likewise where such note shall have been passed, and a certificate of no caution or consignation, or other failure to implement any condition of such interlocutor, has been issued, it shall be competent (excepting only in the cases

specified in sec. 4), on payment of previous expenses, to present a second note of suspension, the procedure upon which shall be the same as is provided in the said Act with regard to notes of suspension, and suspension and interdict, or liberation.

21. When once a note of suspension has been passed, no further procedure, except as under head 16 above, is competent in the Bill Chamber.

22. When no appearance is made for the respondent, the complainer should, on the expiry of the induciæ, lodge in process a minute or note shortly setting forth that the note has been served, and that induciæ have expired conform to the execution of service (which is written on the certified copy and returned to process), and crave the Lord Ordinary to pass the note and grant or continue the sist of execution or interim interdict (as the case may be). An order in these terms follows as a matter of course, and the process should, after the lapse of fourteen days, be transmitted to the office of the Outer House Judge, to whom it is marked for final disposal.

23. The marking of a note to the Court of Session is done by the agent for the party who has the right to do so writing on the back of the principal note the Division, Judge, and Clerk, and by dating and signing same.

24. Caution in common form is the caution requiring to be found in the case of suspension of a charge for payment, and this includes not only the sum charged for, but the expenses of the process (*see* form of bond, page 56).

25. Reclaiming notes to the Inner House against interlocutors pronounced in the Bill Chamber must be presented within fourteen days. A copy of the reclaiming note should be intimated to the Bill Chamber Clerk. This is his warrant for transmitting the process.

26. The lodging of a reclaiming note neither prevents the Clerk of the Bills from issuing the passed note, or a certificate of refusal, as the case may be, nor hinders the interlocutor submitted to review from being carried into effect by the opposite party, unless the Lord Ordinary on the Bills shall stay proceedings on special cause shown by a note for the party by prohibiting the delivery of the note or the issuing of the certificate in such terms and conditions, and during such time as he may judge reasonable for enabling the party to obtain a review of the interlocutor.

27. In a suspension which is defended, and after the answers are lodged, the process may, of consent of parties, without discussion, be transmitted at once to the Court of Session. This is done by presenting to the Bill Chamber Clerk a joint letter signed by the agents of both parties craving that this should be done, and an interlocutor pronounced giving effect to this request.

28. When a process is transmitted to the Outer House (on the passing of a note) or to the Inner House (on reclaiming note) every number ought to be in the process.

29. Extract decrees refusing notes or for expenses are prepared and extracted in the Bill Chamber.

VII.—Points in Suspension and Interdict.

1. In the event of interim interdict being wanted, it must always be craved in the prayer.

2. Where the circumstances of the case warrant it, interim interdict is sometimes granted without caution.

3. A frequent practice now in use is, when giving an order of service, to reserve as to interim interdict until the note is advised on answers.

4. If interim interdict is granted, without caution on presentation of the note, it takes effect on service of the note.

5. If caution is offered it will be for "whatever damage or expense may be occasioned by wrongous interdicting," &c. (*see* bond, page 58).

6. The same rules are applicable here as to caution, time for lodging answers, refusal, &c., as are noted under the head of suspension, as also regarding the marking of Division, Outer House Judge, reclaiming notes, &c.

VIII.—Rules as to Marking of Notes of Suspension or Suspension and Interdict to Court of Session.

1. If a note is passed and no sist of execution of diligence or order for liberation, or interim interdict granted, the complainer has the right to mark the note with the Division and Outer House Judge within fourteen days, from the date of the interlocutor passing the note, after which the respondent can do so.

2. If sist, interdict, or liberation granted, the respondent has the right to mark the note within fourteen days from the

date of the interlocutor passing the note, and failing his doing so, the complainer has the right to do so—*Bennet* v. *Bruce*, 2 S.L.T. 347, 6th December, 1894.

3. In practice it is now usual to serve a full copy of the note, including the statement of facts and note of pleas-in-law.

IX.—Points in Suspension and Liberation.

1. Since the abolition of imprisonment for debt this process is of rare occurrence, but the procedure is practically the same as in suspensions. Liberation takes place on production of a certified copy of the interlocutor granting liberation. (For bond of caution *see* page 54.)

2. In a suspension and liberation a full copy is ordered to be served, and if liberation is not granted on presentation of the note, the induciæ are usually not more than forty-eight hours.

3. Liberation has also been ordered, *pendente processu*, on cause shewn, such as by production of a medical certificate.

4. Imprisonment is still competent for non-payment of aliment or Government taxes, or for failure to obey an order *ad factum præstandum*.

X.—Points in Caveats.

1. A caveat craving notice of the presentation of a suspension or a suspension and interdict, &c., remains in force for one month from the date when it is lodged in the Bill Chamber.

2. On a note of suspension, suspension and interdict, &c., against which a caveat has been lodged being presented, the Clerk of the Bills orders an immediate hearing, at same time requesting the suspenders' agents to furnish the caveators' agents with a copy of the note.

3. At the hearing on the caveat the Lord Ordinary disposes of the question of sist of execution or interim interdict either by granting or by reserving either of these matters for later consideration, and orders answers to be lodged within a period of from four to eight days.

4. If a complainer chooses not to have a discussion on the caveat, he can take an order for service on a short induciæ, and thus save a preliminary discussion, and the question of sist or interim interdict can be discussed after answers are

lodged. When the complainer agrees to this course the induciæ are generally from two to four days.

5. A caveat for a railway or other public company is usually put up in the form of "any person" against the company, and this entitles them to immediate notice of every possible application competent in suspensions in the Bill Chamber.

6. The fee stamp payable on every caveat or renewal thereof is 2s. 6d.

XI.—Fees in Suspension, &c.

All notes of suspension, &c.—note, 7s. 6d.; certified copy of note, 2s. 6d.; answers, 7s. 6d.; bonds of caution, 7s. 6d.; certified copy interlocutor, 2s. 6d. These fees are payable in law Court stamps. (For general table of Bill Chamber fees, *see* Appendix.)

Part II.

PROCEEDINGS IN PETITIONS.

EXTRACTS FROM STATUTES REGULATING PROCEDURE BEFORE JUNIOR LORD ORDINARY.

I.—Act of Parliament to Regulate the Distribution of Business in the Court of Session in Scotland (20 & 21 Vict. cap. 56, 25th August, 1857).

Section IV.—*Summary Petitions, &c., how disposed of.*—All summary petitions and applications to the Lords of Council and Session, which are not incident to actions or causes actually depending at the time of presenting the same, shall be brought before the Junior Lord Ordinary officiating in the Outer House, who shall deal there with and dispose thereof as to him shall seem just; and, in particular, all petitions and applications falling under any of the descriptions following shall be so enrolled before, and dealt with and disposed of by, the Junior Lord Ordinary, and shall not be taken in the first instance before either of the two Divisions of the Court, viz.:—

1. Petitions and applications under any of the various statutes now in force relative to entails:

2. Petitions and applications under any of the general Railway Acts, or under the Lands Clauses Consolidation (Scotland) Act, 1845, or under any local or personal Act:

3. Petitions and applications relative to money consigned under any statute or law, subject to the order, disposal, or direction of the Court of Session:

4. Petitions and applications for the appointment of judicial factors, factors *loco tutoris* or *loco absentis*, or *curators bonis*, or by any such factors or curators for extraordinary or special powers, or for exoneration or discharge:

5. All petitions, applications, and reports under the Act 12 & 13 Vict. cap. 51, intituled "An Act for the better Protection of the Property of Pupils, absent Persons, and Persons under Mental Incapacity, in Scotland."

II.—Act of Parliament to Regulate the Number and Duties of the Clerks of the Court of Session and Bill Chamber in Scotland, and for other Purposes (52 & 53 Vict. cap. 54, 30th August, 1889).

Section III.—*Transfer of Petitions to Bill Chamber.*—And whereas it is desirable that a portion of the work at present falling upon the clerks of the Court of the Junior Lord

Ordinary should be performed by the clerks of the Bill Chamber, be it enacted as follows:—

All summary petitions and applications, which are at present, under the provisions of sec. 4 of the Act 20 & 21 Vict. cap. 56 (intituled "An Act to regulate the Distribution of Business in the Court of Session in Scotland"), appropriated to the Court of the Junior Lord Ordinary, shall, from and after the date at which this Act comes into operation, be presented and disposed of in the Bill Chamber, and the custody of all processes relative to such summary applications and petitions shall be transferred to the Clerk of the Bills and his assistants, who shall exercise all powers and discharge all duties in reference to the procedure in such applications and petitions as are at present competent to and incumbent upon the clerks in the Court of the Junior Lord Ordinary; and such applications may be made and petitions presented and disposed of, and orders pronounced thereon at all times by the Junior Lord Ordinary in session, and by the Lord Ordinary on the Bills in vacation.

Provided that nothing herein contained shall affect the form of such applications and petitions, or of the interlocutors to be pronounced therein, or the preparation of extracts of decrees pronounced therein, or shall increase or alter the powers presently possessed during vacation by the Lord Ordinary on the Bills, who shall have the same powers, including that of reporting to the Inner House, as are at present exercised by the Junior Lord Ordinary.

III.—Act of Parliament to Amend and Extend the Law Relating to Judicial Factors and others in Scotland, &c., &c. (52 & 53 Vict. cap. 39, 12th August, 1889).

Section XI.—*Factors* loco tutoris *to pupils to become curators on pupil attaining minority.*—After the passing of this Act it shall not be necessary to apply for the appointment of a *curator bonis* to a minor whose estate has, up to the date of his becoming a minor, been administered by a duly appointed factor *loco tutoris*, and the said factor shall, *ipso facto*, become *curator bonis* to the said minor, and shall continue the administration of the estate until the majority of the said minor, or until he has himself chosen curators in the manner directed by law.

I.—PETITIONS AT COMMON LAW AND UNDER PUPILS' PROTECTION AND JUDICIAL FACTORS ACTS.

(A.) Petitions for Appointment of *Curator Bonis* or in connection therewith.

1. Petition for Appointment of *Curator Bonis* to an Incapax.

[This petition is at the instance of the wife and children of the incapax, other than the children who are called as respondents.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*], wife of C. D., and E. F. and I. J. [*design*],

Humbly sheweth—

That the said C. D. [incapax] has been for some time, and now is, of unsound mind, and incapable of managing or giving directions for the management of his affairs, as will appear from the medical certificates herewith produced, and copies of which are hereto annexed.

That the funds and property of the said C. D., so far as known to the petitioners, are:—

Heritable estate. [State estate.]

Moveable state. [State estate.]

That the petitioners are (1) the wife and (2) the children of the said C. D., other than [name other children] who are called as respondents. The said children are the sole next-of-kin of the said C. D.

That in these circumstances it is necessary that a *curator bonis* should be appointed to receive and take charge of the said C. D.'s estate, and to manage his affairs.

That the petitioners beg to suggest to your Lordships [name and designation], as a fit and proper person to be appointed *curator bonis* to the said C. D.

May it therefore please your Lordships to appoint this petition to be intimated on the walls and in the minute

book, in common form, and to grant warrant for serving the same on the said [name incapax] personally [and children and next-of-kin who are not petitioners], and ordain them to lodge answers thereto, if so advised, within eight days after service; and thereafter, on resuming consideration hereof, with or without answers, to appoint the said [person suggested], or such other person as your Lordships may think fit, to be *curator bonis* to the said [incapax], with the usual powers, he always finding caution before extract, and to decern; and further, to find that the expenses of this petition and procedure thereon form a good charge against the ward's estate; or to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

[Signed by counsel.]

APPENDIX.

Two medical certificates. (*See* page 98.)

PROCEDURE.

Intimation and service on eight days' induciæ.

On expiry of induciæ, appoint and allow expenses.

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2. PETITION OF TRUSTEES OF DECEASED CURATOR AND OTHERS FOR APPOINTMENT OF NEW *Curator Bonis* TO TWO WARDS, AND DISCHARGE OF THE REPRESENTATIVES OF DECEASED *Curator Bonis*.

[Refer in margin to date of boxing of original petition.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B., C. D. [*design*], trustees of E. F., acting under his trust disposition and settlement and codicil, dated respectively and , and registered in the books of Council and Session the day of ; and of G. H. and I. J., children now in minority of the now deceased Mrs. K. L. for their respective rights and interests,

Humbly sheweth—

That of this date [insert date in margin] the said Mrs. K. L.

presented a petition to your Lordships setting forth that [here state averments contained in the petition necessitating the appointment of a *curator bonis* and factor *loco tutoris* to the minor and tutor respectively].

Of this other date [insert date in margin] your Lordships were pleased to appoint E. F. to be *curator bonis*, with the usual powers, to [insert names of minors], and factor *loco tutoris*, with the usual powers, to [insert names of pupils]. The said E. F., having found caution, entered upon possession of the said estate as factor *loco tutoris* and *curator bonis* foresaid, and until his death on [specify date], administered the same: the curatory estate at the date of curator's death consisted of [specify estate as at death of curator].

[Here state how many of the wards are in minority or pupillarity, and if any have attained majority.]

The said curator's cautioner was [name and designation].

In these circumstances it has become necessary to apply to your Lordships to appoint a new *curator bonis* to the said [insert name of ward or wards].

The petitioners respectfully suggest [name and designation] as a fit and proper person to be appointed *curator bonis* in room and place of the deceased E. F. The accounts of the intromissions of the said deceased E. F. down to the date of his death on [specify date] have been audited, and the petitioners are desirous that his estate and representatives should be exonered and discharged, and warrant granted for delivery of his bond of caution.

[The prayer will be for intimation and service on eight days' induciæ on all concerned, including cautioner, and will then proceed]: and upon resuming consideration hereof, to appoint the said or other fit person to be *curator bonis* to the said with the usual powers, he always finding caution before extract: Further, to remit to the Accountant of Court to examine the accounts and intromissions of the said deceased as factor *loco tutoris* and *curator bonis* foresaid, to fix the balance due thereon, and to report thereon to your Lordships, and in the event of a balance being found due by the said deceased [late curator's name], to ordain his representatives and the said as his

cautioner to make payment thereof to the *curator bonis* to be herein appointed, or in the event of a balance being found due to the said deceased [late curator's name], to ordain the *curator bonis* to be herein appointed to make payment of the same to his representatives out of the said estate. And further, upon payment of such balance as aforesaid, to exoner the representatives of the said deceased [late curator's name] and his said cautioner of the said curatory and factory, and of his and their whole actings, intromissions, and management had under the same; and to grant warrant to the Accountant of Court to deliver up the said deceased's [late curator's name] bond of caution; and further, to find that the expenses hereof, and of the procedure to follow hereon, shall form a good and lawful charge against the said curatory; and to allow an account thereof to be lodged, and to remit the same to the Auditor to tax; and to authorise the *curator bonis* to be appointed herein to pay and take credit for the same; and to decern *ad interim;* or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ (eight days), appoint *curator bonis*, and remit late curator's and factor's accounts to Accountant for audit.

On Accountant's report being lodged, discharge late curator and factor, and grant warrant for delivery of bond of caution, with expenses to petitioners.

3. Petition for Appointment of *Curator Bonis* to a Pauper Lunatic Resident in England, and who is Entitled to Heritage in Scotland to which no Title has been made up in his Name.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of C. D. [*design*],

Humbly sheweth—

That A. B. [design], brother of the petitioner, C. D., only surviving son and heir of E. F. [design], the last proprietor feudally vested in the heritage after mentioned, is entitled to succeed to the subjects described in the prayer hereof, but no title to the said subjects has been made up by or on behalf of the said A. B. He has been for many years, and still is, afflicted with mental incapacity, and is incapable of managing his own affairs, as will appear from the medical certificates produced herewith, and printed as an appendix hereto. No committee or other guardian has been appointed in England to the said A. B. Consequently at present there is no one who is in a position to sell the said heritable subjects and grant the necessary conveyance of the said subjects in favour of the purchaser thereof.

That in these circumstances it is necessary to apply to your Lordships for the appointment of a *curator bonis* to the said A. B., and the petitioners humbly suggest that G. H. should be appointed to the office, with the usual powers, and also with power to make up title in his own person as *curator bonis* to the said heritable subjects described in the prayer hereof, in terms of section 24 of "The Titles to Land Consolidation (Scotland) Act, 1868."

[Here specify any relatives of ward on whom it will be necessary to serve the petition.]

That the said A. B. is not possessed of any estate, other than the said heritable estate. The said A. B. is a pauper lunatic chargeable to the Union since [date] and the price of the said heritable subjects when sold, under deduction of expenses, will fall to be paid to the said Union.

[The prayer will be for intimation and personal service on ward, and on other relatives having interest, on eight days' induciæ, and will then proceed]: and there-

after, on resuming consideration of this petition, with or without answers, to nominate and appoint the said G. H., or such other person as your Lordships may think fit, to be *curator bonis* to the said A. B. with the usual powers, he always finding caution before extract; further, to grant warrant to and authorise the said *curator bonis* to make up and complete a title in his own person as *curator bonis* foresaid *habili modo* to All and Whole [insert description of heritable estate], and to decern [here insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

[Take in two certificates by doctors.] (*See* form, page 98.)

PROCEDURE.

Intimation and service.

On expiry of induciæ.

Appoint curator, and grant warrant to complete title, with expenses.

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4. PETITION BY TWO MINORS RESIDENT IN ENGLAND, HAVING MOVEABLE ESTATE IN SCOTLAND, WITH CONSENT OF THEIR FATHER, FOR APPOINTMENT OF A *Curator Bonis* TO ADMINISTER SUCH ESTATE.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. and C. D. [*design*], with consent of E. F., their father,

Humbly sheweth—

That the petitioners, A. B. and C. D., are the only children of the said E. F., and of the now deceased G. H., and are presently in minority, having been born on [state dates of birth] respectively. The petitioners are all domiciled in England.

The petitioners, A. B. and C. D., are, under the holograph will or settlement of the deceased I. J. [*design*], each entitled to [here specify estate falling to the petitioners, and amount thereof].

The petitioners are desirous that the above share should be uplifted and invested and administered for behoof of the petitioners, A. B. and C. D., until they respectively attain majority, and this they are advised their father, the said E. F., as their legal guardian, could not according to the law of England competently do. According to the law of England, the petitioners, A. B. and C. D., are infants. In these circumstances, the petitioners are under the necessity of applying to your Lordships for the appointment of a *curator bonis* to the said A. B. and C. D., and they respectfully suggest [insert name of curator proposed] for that office.

[The prayer will be for intimation on the walls and in the minute book in common form, and will thereafter proceed]: and thereafter, upon resuming consideration of this petition, with or without answers, to nominate and appoint the said [insert nominee], or such other person as your Lordships shall think proper, to be *curator bonis* to the said A. B. and C. D., with the usual powers, he always finding caution before extract, and to decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.
On expiry of induciæ.
Appoint curator.

---

5. PETITION BY A LANDED PROPRIETOR WHO IS NOT OF UNSOUND MIND, BUT IS UNABLE FROM AGE AND INFIRMITY TO MANAGE HIS AFFAIRS, FOR THE APPOINTMENT OF A *Curator Bonis*.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is proprietor of the lands of [specify estates] and others in the county of

That the petitioner is [specify years of age], and has recently fallen into a very infirm state of health. [State generally weak and infirm condition of health, and embarrassed condition of affairs.]

The petitioner is unmarried and has no near relatives, and there is no person so far as known to him who has any interest to oppose the prayer of the petition. In these circumstances the petitioner is under the necessity of applying to your Lordships for the appointment of a *curator bonis*, and begs leave to suggest as a proper person to be appointed to the office [insert name of proposed curator].

May it therefore please your Lordships to appoint this petition to be intimated on the walls and in the minute book in common form, and to allow answers to be lodged thereto within eight days after such intimation: and thereafter, on resuming consideration hereof, with or without answers, to appoint the said [insert name of proposed curator], or such other person as your Lordships may name, to be *curator bonis* to the petitioner, with the usual powers, he always finding caution before extract, and to decern *ad interim;* or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

Two special independent medical certificates giving full details of age and state of health of petitioner, and his inability to transact business.

PROCEDURE.

Intimation on walls and in minute book.
On expiry of induciæ.
Appoint curator.

---

6. PETITION OF A *Curator* FOR APPROVAL OF INVESTMENT.

[Refer in margin to date of boxing of original petition.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*], *curator bonis* to C. D. [*design*], *Humbly sheweth*—

That of this date [insert date in margin], upon the applica-

tion of [name and designation of petitioner], your Lordships were pleased to nominate and appoint the petitioner to be *curator bonis* to the said C. D., with the usual powers. The petitioner, having found caution, his appointment was extracted of this date [date], and he thereafter entered upon the discharge of the duties of his office.

That the following investments belonged to the said ward at the date of the petitioner's appointment, viz.:—[specify investments].

The petitioner took over these stocks after his appointment as *curator bonis* foresaid, and has continued to hold, and still holds, the same as investments for the funds of the said C. D. under his management.

That, by the "Trusts (Scotland) Amendment Act, 1884," 47 & 48 Vict. cap. 63, it is enacted as follows:—

Section 2—"In the construction of the said recited Acts, and of this Act . . .

"'Trustee' shall include tutor, curator, and judicial factor.

"'Judicial Factor' shall mean any person judicially appointed factor upon a trust estate or upon the estate of a person incapable of managing his own affairs, factor *loco tutoris*, factor *loco absentis*, and *curator bonis*."

Section 3—"Trustees under any trust may, unless specially prohibited by the constitution or terms of the trust, invest the trust funds—(*a*) In the purchase of—

. . . . . .

7, East India stock, stocks or other public funds of the Government of any colony of the United Kingdom approved by the Court of Session, and also bonds or documents of debt of any such Government approved as aforesaid, provided such stocks, bonds, or others are not payable to bearer."

That the said stocks transferred to the petitioner fall within the category of investments specified in the above-recited section of the said Trusts Act, and are not payable to bearer, and he believes they are sound investments. It is necessary, however, that they should be approved by the Court of Session before he can continue to hold them as investments properly authorised for the funds under his management, as *curator bonis* foresaid, in terms of the above section of the Trusts Act, and he therefore

makes the present application to your Lordships for such approval.

The petitioner's cautioner is E. F.

[The prayer will be for intimation and service on the petitioner's cautioner and on the Accountant of Court, and will then proceed]: and on resuming consideration thereof, with or without answers, to approve of the foresaid stocks, viz. [specify stocks]; and to grant warrant to and authorise the petitioner to hold the said several stocks as investments for the funds under his management, as *curator bonis* to the said C. D. [here insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.
On expiry of induciæ.
Grant prayer, with expenses.

7. PETITION OF A *Curator Bonis* FOR RECALL OF CURATORY AND DISCHARGE OF *Curator Bonis* IN RESPECT OF CONVALESCENCE OF THE INCAPAX.

[Refer in margin to date of boxing of petition for appointment of *curator bonis*.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*], *curator bonis* to E. F. [*design*],

Humbly sheweth—

That the petitioner, the said A. B., was of this date [insert date in margin], on the application of C. D. [name of petitioner and relation to the incapax], appointed *curator bonis* to the said E. F. [name of incapax], who was then of

unsound mind, and incapable of managing his own affairs, or of giving directions for the management thereof, and having duly found caution, an extract of his appointment, dated , herewith produced, was issued, and the petitioner thereupon entered upon the management of the curatory estate.

The said E. F. having recovered, and being now of sound mind and able to manage his affairs, and to direct their management, as appears from the medical certificates by , herewith produced, and copies of which are annexed, the appointment of the petitioner as his *curator bonis* should now be recalled, and the petitioner discharged of his office.

[Here state that the petitioner's accounts have been examined and audited by the Accountant of Court. If the balance has been paid over to the ward, this should also be stated; or, if the estate has not been wound up and discharged or accounted for.]

The curatorial estate under the charge of the petitioner as at this date, consists of the following, namely:—[Here give particulars in full].

The persons on whom the petition for appointment of *curator bonis* was served who now survive, are—[here state next-of-kin of the incapax when the original petition for curator was served, and also specify the petitioner, A. B.'s, cautioner].

In these circumstances, the petitioner respectfully applies to your Lordships to have his appointment recalled, and to be judicially exonered and discharged of his whole actings, intromissions, and management of the said estate, and to have warrant granted for delivery of his bond of caution.

[The prayer will be for intimation and service on eight days' induciæ, and will then proceed]: and thereafter, upon resuming consideration hereof, with or without answers, to recall the curatory; to remit to the Accountant of Court to examine the accounts of the petitioner, with the relative vouchers, and to report; and on considering the report of the Accountant, to exoner and discharge the petitioner of his whole actings, intromissions, and management as *curator bonis* foresaid; to grant warrant

to and ordain the Accountant of Court to deliver up the bond of caution for the petitioner, and to decern [here insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

[Insert as appendix two medical certificates.] (*See* page 99.)

PROCEDURE.

Intimation and service.

On expiry of inducie, recall curatory, and remit accounts to Accountant of Court.

On Accountant's report being lodged, discharge curator and grant warrant for delivery of bond of caution, with expenses.

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8. PETITION OF A *Curator Bonis* TO A WARD WHO HAD DIED INTESTATE FOR EXONERATION AND DISCHARGE.

[Refer in margin to date of boxing of original petition.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., upon the petition of C. D. [design the petitioner who presented original petition], who resided at was appointed *curator bonis* to E. F. [the ward] on this date [insert date in margin], conform to act and decree herewith produced. That the petitioner thereafter found caution in common form and entered upon the management of the said estate, of which he lodged an inventory with the Accountant of Court.

That the petitioner has duly lodged with the Accountant of Court annually accounts of his intromissions with his ward's estate since his appointment down to [give date of last

account], which have been audited and approved of, and he will produce in the course of the proceedings to follow hereon a further account of his intromissions from and after the said date to the date of his ward's death. The said estate, as at the [insert date], amounted to £ . The said E. F. died on the intestate, and the petitioner was on [give date] confirmed executor-dative *qua curator bonis* to one of her next-of-kin by the Sheriff of the Sheriffdom of conform to testament-dative herewith produced.

The surviving next-of-kin of the said E. F. are [specify relatives].

In these circumstances, the petitioner desires to have himself judicially exonered and discharged of said curatory, and to have his bond of caution delivered up.

The cautioner for the petitioner is [insert name of cautioner].

[The prayer will be for intimation and service on all having interest, and on the cautioner of the curator on eight days' induciæ, and will then proceed]: and thereafter, upon resuming consideration hereof, with or without answers, to remit to the Accountant of Court to examine and report upon the petitioner's accounts, and, upon consideration of said report, and on the petitioner paying over to himself, as executor-dative to the said E. F., the balance found or ascertained to be due, and producing in process a receipt therefor, to discharge the said petitioner of the office of *curator bonis* foresaid, and to authorise and ordain the Accountant of Court to deliver up his bond of caution, and to decern [here insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, remit to Accountant of Court.

On Accountant's report being lodged, discharge curator and grant warrant for delivery of bond of caution, with expenses.

9. Petition of an Incapax with Consent of *Curator Bonis* for Recall of Curatory in respect of Convalescence of Incapax.

Division.

[Refer in margin to date of boxing of original petition.]

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*], with consent of C. D. [*design*],

Humbly sheweth—

That the petitioner, A. B., was years ago found to be of unsound mind, and unable to manage or give directions for the management of his affairs.

That your Lordships of this date [insert date in margin], on the application of [specify names of petitioners], appointed the said C. D. to be *curator bonis* to the petitioner, the said A. B.

That the said C. D., having found caution, entered upon the duties of his office.

That the petitioner, the said A. B., is now of sound mind, and is capable of managing his own affairs, as appears from the medical certificates produced, copies of which are appended hereto.

This application is therefore presented to your Lordships in order that the curatory may be recalled, and that the *curator bonis*, the said C. D., and his cautioner, may be discharged of the intromissions had under the said curatory, and their bond of caution delivered up.

[Here specify all relatives interested in the curatory estate who require to be called.]

The cautioner for the said C. D. is E. F. [design].

[The prayer will be for intimation and service on all persons interested, including cautioner, on eight days' induciæ, and will thereafter proceed]: and upon resuming consideration hereof, with or without answers, to recall the said curatory, and to remit to the Accountant of Court to examine and report upon the accounts of the intromissions of the said C. D. as *curator bonis* foresaid, and to ascertain the balance due thereon; and on consideration of the Accountant's report, and on payment to the said A. B. of the balance (if any) due by the said C. D.

in respect of his intromissions as *curator bonis* foresaid, to exoner and discharge him, his heirs and representatives, and also his cautioner, the said E. F., of the whole actings, intromissions, and management had by the said C. D. as *curator bonis* foresaid, and to grant warrant to the Accountant of Court to deliver up his bond of caution, and to decern [here insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

Two medical certificates. (*See* p. 99.)

PROCEDURE.

Intimation and service.

On expiry of induciæ, recall curatory and remit accounts to Accountant of Court.

On Accountant's report being lodged, discharge curator and grant warrant for delivery of bond of caution, with expenses.

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10. PETITION FOR DISCHARGE OF A *Curator Bonis* TO A LUNATIC, NOW DECEASED, WHO HAD DIED UNDER CURATORY AND LEFT A DISPOSITION AND SETTLEMENT.

[Refer in margin to date of boxing of original petition.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., was of this date [insert date in margin] appointed by your Lordships to be *curator bonis* to C. D. upon the application of E. F. [design].

The petitioner accepted office and found caution, and thereafter managed the estate of the said C. D. down to the date of his death, which took place at [place and date of death, and whether ward married or single].

An account of the petitioner's intromissions from the date of his appointment to the date of the ward's death was duly

lodged with and audited by the Accountant of Court, who also fixed the amount of commission due to the petitioner. It brought out a nett balance [state result of Accountant's report].

The said C. D. left a testamentary settlement, dated [date of deed and date and place of recording same], under which he appointed the [state nature of testamentary writing, and name of executor]. An extract of the settlement is herewith produced. The said [insert name of executor] was duly confirmed (conform to confirmation), and has granted a discharge, which is also herewith produced, in favour of the petitioner, of his whole actings and intromissions as *curator bonis* foresaid, acknowledging receipt of [here state nature of discharge, &c., to petitioner].

The petitioner desires to be judicially discharged of his actings and intromissions as *curator bonis* foresaid, and to have his bond of caution delivered up.

[State here if any other persons interested in petitioner's estate.]

[Here state name of cautioner.]

[The prayer will be for intimation and service on eight days' induciæ, and will then proceed]: and on resuming consideration hereof, with or without answers, to remit the accounts of the petitioner, as *curator bonis* foresaid, to the Accountant of Court to examine and report thereon; and upon consideration of his report to exoner and discharge the petitioner of all his actings, intromissions, and management as *curator bonis* foresaid, and to grant warrant to the Accountant of Court to deliver up to the petitioner his bond of caution, and to decern [here insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, remit to Accountant.

On Accountant's report being lodged, discharge curator and grant warrant for delivery of bond of caution, with expenses,

11. Petition of a *Curator Bonis* to a Female Incapax for Recall of Curatory and Discharge of Curator in respect of Ward's Convalescence.

[Refer in margin to date and boxing of original petition.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of C. D. [*design*], *curator bonis* to E. F. [*design*],

Humbly sheweth—

That of this date [insert date in margin], on the petition of A. B., the petitioner, C. D., was appointed by your Lordships *curator bonis* to E. F., who was certified to be then of unsound mind.

That the petitioner having accepted office and found caution in common form, his cautioner being [specify cautioner's name], entered upon the management of the estate of the said E. F., lodged with the Accountant of Court the usual inventory, and has continued to administer the same down to the present time.

The said E. F., as appears from the medical certificates herewith produced, and copies of which are appended hereto, has now recovered, and is capable of managing her own affairs.

In these circumstances the present application is made in order that the curatory may be recalled, the said E. F. reinstated in the management and control of her estates, and the said curator exonered and discharged of his intromissions, and warrant granted to uplift his bond of caution.

[The prayer will be for intimation and service on the ward and on the cautioner on eight days' induciæ, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, to recall the curatory; to remit to the Accountant of Court to examine and report upon the accounts of the petitioner as curator foresaid; and on payment to the said E. F. of such balance as may appear to be due, and on receiving a valid discharge for the same, to exoner and discharge

the petitioner of his whole actings, intromissions, and management under the said curatory, and to grant warrant for delivery of his bond of caution, and to decern [here insert crave for expenses]; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

Two doctors' certificates. (*See* page 99.)

PROCEDURE.

Intimation and service.

On expiry of induciæ, recall curatory, and remit accounts to Accountant.

On Accountant's report being lodged, discharge curator and grant warrant for delivery of bond of caution, with expenses.

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12. NOTE FOR AN ORDER ON A *Curator Bonis* TO MAKE AN INTERIM PAYMENT FROM CURATORY FUNDS.

[Refer in margin to date of boxing of original petition for *curator bonis*.]

[This was a note at the instance of a person designed as an English committee of the estate of a Scottish landed proprietor resident in England and unfit to manage his affairs, and who had been previously, on his own petition, put under curatory in Scotland, for interim payment out of the curatory funds which were held and being administered in Scotland.]

Division.

Unto the Right Honourable the Lords of Council and Session.

Note for A. B. [*design*], committee of the estate of E. F., for an order on the *curator bonis* to make an interim payment from the curatory funds.

Humbly sheweth—

That of this date [insert date in margin] C. D. was, on the petition of E. F. (the ward), on account of his own

bodily and mental weakness and infirmity, appointed *curator bonis* to the said E. F., with the usual powers.

That the said C. D. thereafter entered upon the management of the said E. F.'s estate, and has continued in the management thereof ever since. Said estates consist of [specify] in Scotland, and the revenue and produce thereof. The particulars of said estate, and revenue arising therefrom, are [here insert particulars of estate].

That, as appears from an account of charge and discharge of the intromissions of the *curator bonis* foresaid, for the period from to a copy of which is produced herewith, there is a balance of cash in the hands of the curator, and in deposit receipt and current account in his name, amounting to £ . Since the date of the lodging of this account, the curator has received the rents of the estates due at , and as the revenue of the estates is considerably larger than the expenditure, the balance in the curator's hands has been proportionately increased.

That during the whole time from the appointment of the said C. D. as *curator bonis* foresaid, all that has been expended by him as aliment for his ward, E. F., has been [give details of funds and payments].

That, in consequence of the ward, E. F., having received no remittances from his *curator bonis*, he has been put to very great inconvenience, and has necessarily incurred a number of debts.

That by order dated the said A. B. was appointed by the High Court of Justice in England to act as the committee of the estate of the said E. F., who had become a person of unsound mind, and the custody, regulation, occupation, disposition, and receipt of the estate in England of the said E. F. was committed and granted to him. An office copy of the said order is produced herewith.

That by order dated the said High Court of Justice, through one of the Masters in Lunacy, *inter alia*, ordered that the said A. B., as committee foresaid, be at liberty to apply to the proper Court in Scotland for payment to him, as such committee of the estate as aforesaid, of moneys on deposit receipt and on current account, and in the hands of the said C. D. as *curator bonis* foresaid, to be applied under the direction of the Masters in Lunacy for the following

purposes:—[here specify terms of order]. An office copy of the said order is produced herewith.

That the said A. B., as committee foresaid, has no funds belonging to the said E. F. out of which he can make the payments before referred to. The debts referred to in said order are due and addebted by the said E. F., and the *curator bonis* is in possession of funds out of which they can and ought to be met. He has also funds available for the maintenance, past and future, of the ward. The sum of £ is the sum which the committee considers necessary for the reasonable annual maintenance of the ward. The *curator bonis*, though repeatedly applied to, has refused to make any payment to the committee to enable him to discharge the ward's debts, or to provide for his maintenance.

[The prayer here was for intimation and service on curator on eight days' induciæ, and then proceeded as follows]: and on resuming consideration of this application, with or without answers, to ordain the said C. D. as curator foresaid, to pay over to the said A. B., as committee foresaid [specify], all of said sums to be applied by the committee under the direction of the Masters in Lunacy, and to decern; to find the expenses of this application and procedure following thereon a proper charge against the ward's estate, and to find the said C. D., or such other person as may appear and oppose the prayer hereof, liable in the expenses caused by such opposition; or to do further or otherwise as to your Lordships may seem proper.

In respect whereof, &c.

PROCEDURE HERE WOULD BE (IF UNOPPOSED).

Intimation and service.

On expiry of induciæ, grant in terms of prayer.

13. PETITION BY A *Curator Bonis* FOR AUTHORITY TO COMPLETE TITLE EITHER IN HIS OWN NAME OR THAT OF THE WARD.

[Refer in margin to date of boxing of original petition.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*], *curator bonis* to C. D. [*design*], and the said C. D.,

Humbly sheweth—

That, upon the petition of the said C. D., your Lordships were of this date [insert date in margin] pleased to nominate the petitioner to be *curator bonis* to the said C. D., in room and place of the deceased E. F., the former factor *loco tutoris* and *curator bonis* of the said C. D.

There are produced and referred to (*a*) the interim act and decree appointing the said, now deceased, E. F. to be factor *loco tutoris* to the said C. D., dated and (*b*) the interim act and decree appointing the petitioner to be *curator bonis* to the said C. D. as aforesaid.

The petitioner, A. B., having duly found caution, entered upon the administration of the curatorial estate.

Part of the said estate consists of a sum of £ , contained in and due by a bond and disposition in security granted by in favour of the said, now deceased, E. F., as factor *loco tutoris* to the said C. D. (dated and recorded in the Division of the General Register of Sasines applicable to the county of) over the subjects described in the prayer of this petition. The petitioner, C. D., is entitled to the possession, for his own absolute use, of the said bond and disposition in security.

That it is now proper and necessary to complete a title to the said bond and disposition in security, either in the person of the said C. D., in terms of section 14 of the Trusts (Scotland) Act, 1867, or otherwise in the person of the said A. B. as *curator bonis* foresaid, in terms of the Titles to Land Consolidation (Scotland) Act, 1868, and particularly the 24th section thereof, as amended by section 3 of the Titles to Land Consolidation (Scotland) Amendment Act, 1869, and other relative statutes,

The said C. D.'s next-of-kin on the father's side are the petitioner, the said A. B., and , and the nearest of kin on the mother's side are . It is humbly submitted that, in the circumstances, intimation to the said next-of-kin may be dispensed with.

The representatives of the said, now deceased, E. F., the former factor *loco tutoris* and *curator bonis* of the said C. D., are his trustees and executors, namely, .

The cautioner for the petitioner, as *curator bonis* foresaid, is G. H.

[The prayer will be for intimation and service on eight days' induciæ upon the said former curator's representatives, and G. H., and will thereafter proceed]: and thereafter, upon resuming consideration hereof, with or without answers, to grant warrant and authorise the petitioner, A. B., to complete a title *habili modo*, in name of his ward, C. D., or otherwise in his own name, as *curator bonis* foresaid, to the said bond and disposition in security, dated and recorded in the Division of the General Register of Sasines applicable to the county of , the day of , granted by in favour of the said, now deceased, E. F., factor *loco tutoris* to the said C. D., by which bond and disposition in security the said bound and obliged himself, his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said E. F., as factor *loco tutoris* foresaid, his successors in office or assignees whomsoever, at the term of within the office of the the sum of £ sterling, with interest and penalties as therein specified, and, in security of the personal obligation before written, the said disponed to and in favour of the said E. F., as factor *loco tutoris* foresaid, and his foresaids, heritably but redeemably, as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, All and Whole [descriptions, burdens, reservations, &c.]; and

to decern *ad interim* [here insert crave for expenses]; or to do further or otherwise in the premises as your Lordships may consider proper.

According to Justice, &c.

PROCEDURE.

Intimation and service as craved.

On expiry of induciæ, warrant granted to complete title, with expenses.

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14. NOTE FOR *Curator Bonis* FOR SPECIAL POWERS TO SELL STOCKS AND EXECUTE TRANSFERS.

[This note was rendered necessary by the refusal of certain railway companies in England to register transfers unless under a special order of the Court of Session. The sale of stocks by a *curator bonis* in Scotland where they are of such a nature as they cannot be held by him for behoof of the ward is usually an act of ordinary administration, not requiring the authority of the Court.]

[Refer in margin to original petition.]

Unto the Right Honourable the Lords of Council and Session.

Division.

Note for A. B. [*design*], as *curator bonis* to C. D. [*design*],

Humbly sheweth—

That of this date [insert date in margin] the said A. B. was appointed by your Lordships *curator bonis* to the said C. D., conform to interim act and decree, dated and extracted [date] on the petition of E. F. [design]. Thereafter the *curator bonis* duly entered upon the administration of the estate.

That, on investigation, the *curator bonis* found that the ward's moveable estate, apart from the business of [specify] carried on by him, consisted to a large extent of stocks and shares of railways and limited companies in England, the capital value of which amounts in all to about £ [specify].

These stocks and shares not being of the character which a *curator bonis* is empowered to hold under the statutes affecting trusts, the *curator bonis*, after consulting the Accountant of Court, resolved to sell the same, but before selling the stocks of the [specify English railway company], the *curator bonis* submitted the extract of his appointment to the said company, and inquired if they would register transfers of the stock executed by him. The railway company replied that they could not do so without an order from Court, stating as their reason that a *curator bonis* with respect to his ward's estate in England has only the same powers as a committee of the estate of a lunatic appointed by the English Courts, and that such committee has no powers to sell the ward's estate without an order from Court.

That of this date [insert date in margin] the *curator bonis* lodged with the Accountant a report setting forth the position which had arisen in consequence of the refusal of the said railway company to recognise his right to sell the stocks, and stating his intention to present this application to the Court. The said report and the opinion of the Accountant thereon are produced and printed in the appendix hereto.

That, by sec. 131, sub-sec. (3) of the Lunacy Act, 1890 (53 & 54 Vict. cap. 5), it is provided as follows:—"Where a tutor-"at-law after cognition, or a *curator bonis* has been appointed "to a lunatic in Scotland, who has personal property in "England or Ireland, the tutor-at-law or *curator bonis* shall, "without an inquisition or other proceedings in England or "Ireland, have all the same powers as to such property, or "the income thereof, as might be exercised by the committee "of the estate of a lunatic so found by inquisition in England "or Ireland." By sec. 120 of the said Lunacy Act of 1890 it is provided that "the judge may, by order, authorise and "direct the committee of a lunatic to do all or any of the "following things:—(*a*) Sell any property belonging to the "lunatic. . . ." By the Judicial Factors (Scotland) Act, 1889 (52 & 53 Vict. cap. 39, sec. 13), it is provided: "An "official extract of the appointment of any judicial factor, "trustee, tutor, curator, or other person judicially appointed "and subject to the provisions of the recited Acts or of this "Act, shall have throughout the British dominions, as well "out of Scotland as in Scotland, the full force and effect of an "assignment or transfer executed in legal and appropriate

"form of all funds, property, and effects situated or invested "in any part of the British dominions, and belonging to or "forming part of the estate under his charge; and all debtors "and others holding any such funds, property, or effects shall "be bound, on production of such official extract, to pay over, "assign, or transfer the same to such judicial factor, trustee, "tutor, curator, or other person."

If the contention be correct that a *curator bonis* appointed by the Scottish Courts to a person domiciled in Scotland, who holds shares in English limited companies, must obtain the authority of the Court before he is entitled to sell such shares, it will entail great hardship, and cause expense to the estates of such persons in Scotland. It is submitted, however, that no authority from the Court is required by a *curator bonis* in the circumstances above set forth. This application is accordingly made to your Lordships for power to sell the shares described in the prayer hereof, if your Lordships should consider that the authority of the Court is necessary to enable the *curator bonis* to sell the same, or otherwise to find that the *curator bonis* is entitled to sell the said shares without an order from the Court.

The only near relatives of the said C. D. are [specify]. The petitioner's cautioner is [specify].

[The prayer will be for intimation and service on all concerned, including cautioner, on an induciæ of eight days, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, to grant warrant to and authorise the said *curator bonis* to sell and to execute transfers in favour of the purchasers of all or any of the following shares presently standing in the name of the said C. D., viz.:—[specify stocks to be sold], and to decern; or otherwise, to find that the said *curator bonis* is entitled to sell the said shares without first obtaining authority from the Court to that effect; and to find the said curator entitled to the expenses of and incident to this note out of the proceeds of the said shares, or out of the said curatory estate; and to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

Appendix.

1. Report by A. B., *Curator Bonis* to C. D., to the Accountant of Court.

The curator has to report that the ward's moveable estate consists, *inter alia*, of the following stocks and shares of railway and limited liability companies in England, viz.:—[follows list of stocks and shares as in prayer of note].

These stocks and shares not being of the character which a *curator bonis* is empowered to hold under the statutes affecting trusts, the *curator bonis* proceeded to put some of the stocks upon the market and to sell the same for the purpose of having them transferred to proper trust securities. Before effecting a sale of the [specify railway stocks] stocks, the *curator bonis* found, on presenting the extract of his appointment, that the company would refuse to register any transfer signed by him, alleging that a Scottish curator has no power to sell stock in English companies belonging to his ward without having previously obtained judicial authority to that effect. The matter was brought specifically under the notice of the company, who took the advice of their solicitors, and, acting on their instructions, the company still refuse to register any transfers without an order from the Court authorising the *curator bonis* to sell the particular stocks. The company stated that a *curator bonis* had only the same powers with respect to his ward's estate in England as a committee of the estate of a lunatic appointed by the English Courts, and that such committee had no power in England to sell the ward's property without an order from Court.

In these circumstances, the *curator bonis* finds it necessary to apply to the Court for the authority desired by the [specify railway company], and he also proposes in his application to crave authority to sell the whole of the other stocks and shares in railways and limited liability companies in England under his charge in case a similar objection to his title to sell should be taken by any of these companies.

The *curator bonis* craves the Accountant to report his opinion on the proposals above set forth, with a view to the submission of the same to the Court.

Humbly reported by,

A. B., *Curator Bonis.*

2. Opinion by the Accountant of Court on Report by A. B., *Curator Bonis* to C. D.

The ward's estate under the management of the *curator bonis* consists partly of the following stocks and shares:—[specify.]

The curator's appointment was made with the usual powers, he finding caution before extract. Caution was found and the appointment extracted.

The foregoing stocks and shares are such as are not approved of by the Court or sanctioned by the Trusts (Scotland) Amendment Act, 1884, and, should the curator continue to hold same, and loss ensue to the estate, he would be held liable in said loss. It is thus his duty to himself and to the estate that they be realised by him. Upon inquiry at the [specify railway company], however, he finds that they will not recognise his right to transfer the stocks standing in his ward's name without having first obtained the authority of the Court to do so. Reference is made to sec. 13 of the Judicial Factors (Scotland) Act, 1889, and to sub-sec. (3) of sec. 131 of the Lunacy (England) Act, 1890. The former section provides that an extract of the appointment of any judicial factor shall, in any part of the British dominions, have the full force and effect of an assignment or transfer to him of any invested funds or effects falling under his management.

In these circumstances, the Accountant is of opinion that special powers are not necessary, but reports the matter to the Court.

Certain English stocks have been realised by the curator, no objection having been taken by the companies to his title to do so. He includes in his report all English stocks still standing in the name of the ward, whether his title has been objected to or not.

———, *Accountant of Court.*

Procedure.

Intimation and service.

On expiry of induciæ.

Lord Ordinary reported the case to the First Division.

The First Division pronounced the following interlocutor:—

The Lords, having considered the note for the *curator*

bonis, No. 11 of process, upon the report of Lord Ordinary, and heard counsel for the curator, remit to the Lord Ordinary to grant the prayer of the note, and find the curator entitled to the expenses of and incident to the note out of the curatory estate, and remit the account thereof to the auditor to tax, and to report to the Lord Ordinary, and remit to his Lordship to proceed as may be just, with power to decern for the taxed amount of said expenses.

The Lord Ordinary pronounced the following interlocutor:—

The Lord Ordinary, in respect of the remit from the Lords of the First Division contained in their interlocutor of , grants the special powers craved by the *curator bonis* in his note, No. 11 of process, in terms of the prayer thereof and decerns, with expenses, if necessary.

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15. Forms of Medical Certificates in Petitions for Appointment of *Curator Bonis* (to be holograph of granter).

1. I hereby certify, ~~on soul and conscience~~, that I have this day, at [insert residence or asylum where incapax is residing], seen and examined [insert name of incapax], and that he is a person of unsound mind and unfit to manage his affairs, or to give directions for their management.

———, M.D.

Dated this day of .

2. I hereby certify, on soul and conscience, that I have this day seen and personally examined [insert name of incapax], at present an inmate of [insert residence or asylum where incapax is residing], ~~and~~ that the said [name of incapax] is a person of unsound mind, and is incapable of managing his affairs, or giving directions for their management.

———, M.D.

16. Forms of Medical Certificates in Petitions for Recall of Curatory (to be holograph of granter).

1. I hereby certify, on soul and conscience, that I have this day seen and examined [name, &c., of incapax who has recovered], and that he is now of sound mind and fit to manage his own affairs or give directions for their management.

———, M.D.

Dated this day of .

2. I hereby certify, on soul and conscience, that I have this day seen and examined [name, &c., of incapax who has recovered], and that the said [name of incapax] is now of sound mind and fit to manage his own affairs or to give directions for their management.

———, M.D.

Dated this day of .

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17. Certificate as to Dispensing with Service on Incapax.

When personal service of the petition would be injurious to the mind, a medical certificate should be produced, and a crave in the prayer made dispensing with the personal service. The following is the form of such a certificate:—

I hereby certify, on soul and conscience, that from my knowledge of [here insert name of incapax] mental and bodily condition, I have come to the conclusion that personal service of the petition and medical certificates for the appointment of a *curator bonis* would be highly injurious to him.

———, M.D.

(B.) Petitions for Appointment of Judicial Factors or in connection therewith.

1. Petition for Appointment of Judicial Factor at Common Law on Estate of Party Deceased Intestate, at the instance of Widow and his Brothers and Sisters, being the only Parties Interested in the Deceased's Estate.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. and others [*design*],

Humbly sheweth—

That C. D. [name and designation of party deceased] died at on , and left no settlement appointing trustees or other persons to manage his estate or any part thereof.

The deceased was possessed of heritable estate [mention properties and annual value]. He was also possessed of moveable estate [state nature and value].

The deceased was survived by his widow, the said [name], but left no family. The other petitioners are all the brothers and sisters of the deceased, with the exception of one sister, namely, , wife of and residing with , and who resides at . The petitioners and the said are the only parties interested in the deceased's estate, and none of them desire to be confirmed as his executors. It is therefore necessary that a judicial factor should be appointed, and the petitioners respectfully suggest [name and designation] for that office.

[The prayer will be for intimation and service on all parties interested, and to ordain them, if so advised, to lodge answers thereto within eight days after service, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, to nominate and appoint the said [person suggested as judicial factor], or such other person as your Lordships may think proper, to be judicial factor on the intestate estate of the said deceased C. D., with the usual powers, he always finding

caution before extract, and to decern *ad interim*; and to find the petitioners entitled to the expenses of this petition, and of the procedure to follow hereon, out of the said estate; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service on eight days' induciæ.
On expiry of induciæ.
Appoint, and allow expenses.

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2. PETITION FOR THE APPOINTMENT OF A FACTOR *Loco Tutoris* TO A MALE PUPIL WHERE HIS DECEASED FATHER LEFT A WILL CONTAINING NO PROVISION FOR ISSUE OF THE MARRIAGE, AND WHERE THE EXECUTORS NOMINATED BY THE DECEASED DECLINE TO ACT.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of C. D. [*design*], widow of the late A. B.,

Humbly sheweth—

That the said A. B. died on or about the day of , leaving a widow, the petitioner, C. D., and one child, E. F., who was born on the day of . The said E. F. is thus in pupillarity. He resides with his mother at .

The said deceased A. B., on day of , made out and signed a holograph will or testament, appointing [give names of executors and provisions of will]. No other will or settlement of the deceased has been found, and thus no provision is made for the issue of the marriage. There is dubiety as to the validity of the said will in view of the subsequent birth of the said pupil, and on the appointment herein craved being obtained it is intended to have the validity of this will and

the rights of the widow and child in the deceased's estate settled by a Special Case.

The said [names of executors] have both declined the office of executor conferred on them in the said will or testament.

As the petitioner, the said C. D., has an interest to support the said will, and thus adverse to that of the pupil, there is no one to maintain the interests of the pupil; and K. L. [design], who is the nearest agnate of the pupil, and thus entitled to claim the office of tutor-at-law, is about to leave this country and to remain abroad, it has thus become necessary to apply to your Lordships for the appointment of a factor *loco tutoris* to the said pupil child.

The estate of the pupil consists mainly of his interest in his father's estate. The said estate consists of both heritage and moveables. [Specify estate, heritable and moveable.]

The pupil's nearest-of-kin are [here specify pupil's nearest-of-kin on father and mother's side other than the petitioners].

The petitioners beg respectfully to suggest [insert name of proposed factor] as a suitable person to be appointed factor *loco tutoris* to the said pupil.

[The prayer will be for intimation and service on all concerned, and will then proceed]: and thereafter to nominate and appoint the said [insert name], or such other person as your Lordships may deem proper, to be factor *loco tutoris* to the said E. F., with the usual powers, he always finding caution before extract, and to decern; and to direct the expenses of this application, and of the procedure to follow hereon, to be charged against the estate of the pupil; or to do otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.
On expiry of induciæ.
Appoint, and allow expenses.

3. Petition for (1) Appointment of Judicial Factor, and (2) Discharge.

[This is a petition where the prayer craves for the appointment of a judicial factor on an intestate estate, and also for his discharge on realising the estate.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That C. D. died at , in the county of , on the day of without having left any settlement or other writing disposing of his estate or appointing any person to manage it. [State whether married or single, and also his relatives.]

That the deceased left the following estate:—[specify.]

The debts consist of [specify].

[State relationship of petitioners to the deceased, and their interest to have his estate taken charge of.]

[Here state the names and designations of any persons having an interest in the estate, and necessary to be called as respondents.]

That in the circumstances it is desired that a judicial factor should be appointed to ingather and divide the estate, and the petitioners respectfully suggest that E. F. is a suitable person for the office.

[The prayer will be for intimation and service on all concerned on eight days' induciæ, and will then proceed]: and on resuming consideration hereof, with or without answers, to nominate and appoint the said E. F., or such other person as your Lordships shall think proper, to be judicial factor on the estate of the said deceased C. D., with the usual powers, he always finding caution before extract, and to decern; and on the judicial factor realising the said estate, and applying the proceeds thereof as accords of law, to remit to the Accountant of Court to examine and report on the judicial factor's accounts of intromissions, and thereupon to approve

of the report of the Accountant of Court; and to exoner and discharge the judicial factor of the whole actings, intromissions, and management had by him in the judicial factory; and to grant warrant to the Accountant of Court to deliver up his bond of caution, and to decern [insert crave for expenses]; and to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation.

On expiry of induciæ (eight days).

Appointment made.

On estate being wound up and realised, remit to Accountant.

On Accountant's report being lodged, discharge factor and grant warrant for delivery of bond of caution, with expenses.

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4. PETITION FOR APPOINTMENT OF FACTOR *Loco Absentis* WHERE AN INTERIM APPOINTMENT IS ALSO CRAVED.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of C. D., wife of A. B., and E. F., daughter of the said A. B. [*design*],

Humbly sheweth—

That the said A. B. disappeared from his residence and business on or about . The petitioners and their agents have made every possible inquiry, but have not been able to trace his whereabouts. It is believed, however, that he has left the country with the intention of proceeding to [state probable destination, if known]. He has left no address. His disappearance cannot in any way be accounted for, except that his affairs have been somewhat embarrassed.

That at the time of his disappearance the estate of the said A. B., so far as known to the petitioners, consisted of [state nature and amount of estate].

That the petitioners, the said [insert petitioners' names and also those of any other relatives in this country], are his only next-of-kin in this country.

In the circumstances it is necessary, for the management and preservation of the estate, and for carrying on the business, that some one should be appointed to manage the same, and to uplift the income thereof till authentic information be obtained regarding the said A. B., and the present application is therefore made for the appointment of a factor *loco absentis* to the said A. B. Meantime it is absolutely necessary, for the protection of the estate, that an interim factor *loco absentis* should be appointed until the prayer of the petition shall be finally disposed of.

The petitioners would respectfully suggest G. H. [here insert name of factor suggested] as a suitable person to be appointed to the said office.

[The prayer will be for intimation and service edictally on absentee, and also on any relatives necessary to be called, on eight days' induciæ, and will then proceed]: and pending the currency of intimation and service, to appoint the said G. H., or such other person as your Lordships may think proper, to be factor *loco absentis ad interim* until your Lordships shall grant or refuse the prayer hereof for the permanent appointment, with the usual powers, he always finding caution before extract, and to decern; and to dispense with the reading in the minute book *quoad* the said interim appointment, if made; and thereafter, on resuming consideration hereof, with or without answers, to appoint the said G. H., or such other person as your Lordships may deem proper, to be factor *loco absentis* to the said A. B., with the usual powers, he always finding caution before extract, and to decern [here insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service and interim appointment (if granted).

On expiry of induciæ, appoint final, and allow expenses.

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5. PETITION BY A WIDOW AND EXECUTRIX-DATIVE OF A DECEASED PERSON FOR APPOINTMENT OF A FACTOR *Loco Tutoris* TO ONE OF HER CHILDREN, THE PUPIL HEIR IN HERITAGE OF HER HUSBAND.

Unto the Right Honourable the Lords of Council and Session.

The Petition of C. D. [*design*], the widow of A. B.,

Humbly sheweth—

That of this date [insert date in margin] A. B. died leaving a widow (the petitioner) and children of the marriage between them, viz. [here insert names of children and dates of birth]. The said [insert names of children] are in pupillarity, and reside with the petitioner at aforesaid.

The said A. B. died intestate, and without having named any one to act as tutors or guardians to his children. The petitioner was appointed executrix-dative on the deceased's estate and was duly confirmed, conform to testament-dative in her favour by the Sheriff of [county and date of decree]. The moveable estate left by the deceased amounted to £ subject to debts, &c., which amount to £

The petitioner, who has managed deceased's whole affairs since his death, is prepared to continue to act as executrix-dative foresaid, and as guardian or tutor for her pupil daughter, under "The Guardianship of Infants Act, 1886," but she wishes to be freed of the responsibility of acting as guardian or tutor for her son, E. F. [insert name of male heir to whom factor is to be appointed], and it is therefore necessary that a factor *loco tutoris* should be appointed by the Court to the said E. F.

The heritable estate of the said E. F. consists, so far as known to the petitioner, exclusively of his interests as heir to the following heritable subjects, left by his deceased father,

which are subject to the petitioner's right of terce:—[insert heritable estate, and its value in full].

The nearest-of-kin of the said E. F. on the father's side are [insert next-of-kin and all parties who are interested in the estate].

The petitioner begs respectfully to suggest G. H. as a suitable person to be appointed factor *loco tutoris* to the said E. F.

[The prayer will be for intimation and service on eight days' induciæ, and will then proceed]: and on resuming consideration hereof, with or without answers, to appoint the said G. H., or such other person as your Lordships shall deem proper, to be factor *loco tutoris* to the said E. F., with the usual powers, he always finding caution before extract, and to decern [here insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, appoint, and allow expenses.

---

6. PETITION FOR APPOINTMENT OF JUDICIAL FACTOR ON AN ESTATE SO FAR AS SITUATED IN SCOTLAND.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of C. D. [*design*],

Humbly sheweth—

That A. B. died at on this date [insert date in margin], leaving a will dated , which was proved [here state where and when will was proved].

The only estate in Scotland in which the testator had a vested right at the time of his death was [specify estate and amount thereof, and who is managing it, also executors under the will of the deceased A. B.].

The only persons now interested, or who may be interested, under the will of the said A. B., are [specify persons who are interested in will].

There is thus no person in a position to administer the estate of the testator so far as situated in Scotland, and in these circumstances the petitioner makes the present application to your Lordships for the appointment of a judicial factor on the estate of the said A. B., in so far as it is situated in Scotland, for the purpose of receiving and distributing the same in accordance with the terms of his will. The petitioner would respectfully suggest E. F. as a fit and proper person for the office.

[The prayer will be for intimation and service on eight days' induciæ, and will then proceed]: and thereafter, upon resuming consideration hereof, to appoint the said E. F., or such other person as your Lordships shall think proper, to be judicial factor on the said estate of the said deceased A. B. in so far as the same is situated in Scotland, with all the usual powers, he always finding caution before extract, and to decern [here insert crave for expenses]; or to do further or otherwise as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, appoint factor, and allow expenses.

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7. PETITION FOR THE SEQUESTRATION OF THE ESTATES OF A COPARTNERY, AND FOR APPOINTMENT OF JUDICIAL FACTOR.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That on or about this date [insert date in margin] the

petitioner, A. B., entered into partnership with C. D., for the carrying on of a joint-trade or business as [specify business and where carried on] under the firm of .

The terms of the partnership were that the capital was to consist of [here specify capital, and how divided, endurance of partnership, division of profits, &c., history of firm, and causes which have led to presentation of this petition].

The creditors of the firm are pressing for payment of their debts, and the petitioner is unable to deal with their claims.

In the circumstances before narrated it is necessary that the winding-up of the business should be committed by the authority of your Lordships to some neutral and impartial person. The petitioner accordingly makes the present application to your Lordships for the appointment of a judicial factor, and he begs to suggest [insert name of proposed factor].

[The prayer will be for intimation and service to the partner on eight days' induciæ, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, to sequestrate the copartnery estate of [insert firm's name and partners thereof], and to nominate and appoint the said [name of proposed factor], or such other person as your Lordships may think fit, to be judicial factor on the said copartnery estates, with the usual powers, he always finding caution before extract, and to decern; and [if interim factor is desired] meantime, until the prayer of the petition for a permanent appointment is disposed of, to appoint the said [name of factor] to be judicial factor *ad interim*, and to decern; and to dispense with the reading in the minute book [here insert crave for expenses]; or to do otherwise in the premises as to your Lordships shall seem proper.

PROCEDURE.

Intimation and service, and interim factor (if deemed necessary).

On expiry of induciæ, sequestrate estate and appoint, or refuse, as the case may be disposed of.

8. Petition for Appointment of Judicial Factor at Common Law on an Estate of a Deceased Person where all the Trustees and Executors have Died.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of C. D. [*design*],

Humbly sheweth—

That A. B. died on the day of , leaving a last will and testament, dated . By his said last will and testament the said A. B. nominated and appointed [here insert names of executors or trustees, as the case may be, and provisions of the will or trust deed].

That the said [insert names of executors] were duly confirmed executors of the deceased by the Sheriff of the county of , on and entered into possession of deceased's estate; and having realised the same and fulfilled the other purposes of the executry, they invested the whole residue of the estate, as directed by the said last will and testament.

That [here state death of executors or trustees, and dates thereof], and there is no one to administer the estate or to fulfil the unexecuted purpose of the said last will and testament.

That [here state the interest or title of the petitioner in making this application, and names of any persons requiring to be called as respondents].

That the said estate consists of [state amount and details of estate].

In these circumstances, and with a view to the due administration of the said estate, the petitioner is under the necessity of making the present application to your Lordships for the appointment of a judicial factor thereon, and would respectfully suggest [name of factor suggested] as a fit and proper person for the office.

[The prayer will be for intimation and service to all concerned in usual terms on eight days' inducia, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, to nominate and appoint the said , or such other person as your Lordships may think proper, to be judicial

factor on the estate of the said deceased A. B., with the usual powers, he always finding caution before extract, and to decern; and further [insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, appoint, and allow expenses.

---

9. PETITION FOR APPOINTMENT OF JUDICIAL FACTOR ON THE ESTATE OF A DECEASED INTESTATE, WHERE INTERIM FACTOR CRAVED PENDING EXPIRY OF INDUCIÆ.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of C. D. [*design*],

Humbly sheweth—

That A. B. died at , on or about the day of , and left no settlement appointing trustees or other parties to manage his estate, or part thereof. Your petitioner is his , and as such, he is interested in his succession. [Specify petitioner's interest in estate.]

That the said A. B. carried on business at . [Here specify business and give details of financial condition, &c.]

That the following persons are, to the best of your petitioner's knowledge and belief, the legal representatives of the deceased, or have an interest in his estate. [Here specify nearest relatives interested in estate.]

[Here also, if necessary, specify creditors of deceased.]

That the affairs of the said A. B. are much embarrassed, and it is necessary in the interest of his lawful creditors that immediate steps be taken to conserve his estate and preserve

the goodwill of his business. At the present moment there is no person able or entitled to give orders for the conduct of that business, in which there are various servants employed, and in connection with which there are contracts for the supply of [specify contracts or business current] to be attended to. It is therefore necessary that an interim judicial factor be appointed by your Lordships. Your petitioner respectfully suggests E. F. as a fit, proper, and well-qualified person for the appointment, interim and final.

[The prayer will be for intimation and service on all concerned on eight days' induciæ, and will then proceed]: and pending the currency of such intimation, to appoint the said E. F., or such other person as to your Lordships shall seem proper, to be judicial factor *ad interim* on the estate of the said A. B. until your Lordships shall grant or refuse the prayer hereof for a permanent appointment, and that with all the usual powers, he always finding caution before extract, and to decern; and to dispense with the reading in the minute book *quoad* the said interim appointment if made; and thereafter, upon resuming consideration of this petition, to appoint the said E. F., or such other person as to your Lordships shall seem proper, to be judicial factor on the estate of the said A. B., and that with all the usual powers, he always finding caution before extract, and to decern [insert usual crave for expenses]; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service, and interim factor (if deemed necessary).

On expiry of induciæ.

Appoint final, and allow expenses.

10. PETITION BY A WIDOW AND AS TUTRIX FOR HER CHILDREN PRAYING FOR THE APPOINTMENT OF A JUDICIAL FACTOR ON THE ESTATE OF HER DECEASED HUSBAND, UNDER THE 164TH SECTION OF THE BANKRUPTCY ACT, 1856.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*], widow of the deceased C. D. [*design*], and also as tutrix and administrator-in-law of E. F. and G. H., pupils, the only children of the marriage between her and the said C. D.,

Humbly sheweth—

That the said C. D. died intestate on the day of , and left no settlement appointing trustees or other parties to manage his estate, or part thereof.

That the petitioner and the said E. F. and G. H. are the widow and only children of the deceased, and have thus the sole interest in the deceased's succession.

That the estate of the said deceased C. D., so far as known to the petitioner, consists of the household furniture at [specify estate].

That the following persons are, to the best of the petitioner's knowledge and belief, all the creditors or persons claiming to be creditors of the deceased, viz.:—[specify creditors].

[Here specify the condition of the deceased's estate, and the circumstances rendering the application necessary.]

It will therefore be necessary that an interim appointment be made, and the petitioner respectfully suggests [insert name of person suggested] as a fit and proper person to be appointed judicial factor.

That the petitioner is entitled, under section 164 of the Bankruptcy (Scotland) Act, 1856, to make the present application for the appointment of a judicial factor on the estate of the said deceased, with the powers thereby conferred.

[The prayer will be for intimation and service on all parties interested and advertisement in the *Edinburgh Gazette* on an induciæ of fourteen days, and will then proceed]: and thereafter, on resuming consideration of the same, to appoint the said [name of factor suggested], or such fit person as to your

Lordships shall seem proper, to be judicial factor on the said estate, and that with all the powers of the statute, he always finding caution before extract, and to decern; and to find the petitioner entitled to the expenses of this petition and proceedings thereon out of the estate; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service ordered, and advertisement in *Gazette*.

On expiry of induciæ (fourteen days), appoint and allow expenses.

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11. PETITION BY CREDITORS OF A FIRM FOR APPOINTMENT OF JUDICIAL FACTOR.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

[State (1) the name, history, and business of the firm, and the condition of their business and assets. If disputes going on among the partners, then nature and extent should be set forth. (2) The amount of debt due to the petitioners. (3) The assets of the firm, and their financial position, and, if possible, state names of principal creditors and amount due. If estate is believed to be solvent, or is bankrupt, this had better be set forth. If the goodwill and book debts are of value, and if disputes going on, the following statement or something similar may be inserted]:—

The book debts due to the business form a great part of the assets, and at the present time the creditors have no protection against the estate being wasted, and the goodwill of the business destroyed. The petitioners are further apprehensive that, owing to the dispute among the partners, the book debts by their customers, in certain instances, may not be recovered. Unless steps are taken to preserve the business, the goodwill and assets will be dilapidated and destroyed, and the creditors will suffer irretrievable injury.

In these circumstances it is necessary, in the interests of the creditors, that a judicial factor be appointed to take charge of the business and preserve it for all concerned.

The petitioners respectfully suggest [here insert name of proposed factor].

[The prayer will be for intimation and service on eight days' induciæ on the firm and partners, and also by service on, or by posting circulars to, all known creditors of the firm, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, to appoint the said [name of factor], or such other person as your Lordships may think proper, to be judicial factor on the estates of the firm of [insert name and designation of firm], with the usual powers, he always finding caution before extract, and to decern; further, to find the petitioners entitled to the expenses of this petition and procedure thereon out of the firm's estate; or to do otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, appoint and allow expenses.

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12. PETITION FOR APPOINTMENT OF JUDICIAL FACTOR OR *Curator Bonis* ON AN ESTATE OF A LIVING INCAPAX RESIDENT ABROAD, BUT WHO HAS A DOMICILE AND PROPERTY IN SCOTLAND MANAGED BY THE PETITIONER UNDER A POWER OF ATTORNEY.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That C. D. [design] was born at [insert place of birth] on [insert date].

C. D. received his education in Scotland [here describe

personal history of C. D., and his present residence, mental condition, &c.; also specify his estate in Scotland].

C. D. is domiciled in this country, and the bulk of his estate is under the charge of the petitioner as his attorney. He is not only absent from this country, but he is also of unsound mind, and unable to intromit with and manage his estate. A certificate [or two certificates if possible] by [design doctor] as to his mental state is herewith produced. The petitioner, A. B., is advised that in view of the information which he has received regarding the mental condition of the said C. D. it would not be safe for him to continue the management of his affairs without judicial authority, and he is accordingly in course of obtaining from [specify] the medical certificates required for the appointment of a *curator bonis*. Such appointment, however, cannot be made for at least six months, and as it is necessary that some person should at once be appointed to attend to the management of the said C. D.'s affairs, the petitioner makes this application to your Lordships to appoint a judicial factor, or otherwise an interim judicial factor, on the estate of the said C. D., or otherwise to appoint a *curator bonis* to him.

The said C. D.'s nearest relatives are [specify].

The petitioner would humbly suggest [insert name] as a fit and proper person to be appointed judicial factor, or otherwise *curator bonis*, with the usual powers.

[The prayer will be for intimation and service on all concerned, including incapax, edictally on induciæ of eight days, and will then proceed]: and thereafter, to appoint the said [insert name], or such other person as your Lordships may think fit, to be judicial factor, or interim judicial factor, on the estate of the said C. D., or otherwise to be *curator bonis* to the said C. D., with the usual powers, and to decern; or to do otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ in this case a judicial factor appointed and *curator bonis* dispensed with, or *vice versâ*, as the Court may deem advisable.

13. Note for Trustees and Executors of a Deceased Cautioner for a Judicial Factor for delivery of a Bond of Caution in a Judicial Factory.

Division.

[Refer in margin to the petition for appointment of judicial factor.]

Unto the Right Honourable the Lords of Council and Session.

Note for I. J. and K. L. [*design*], trustees and executors of the late G. H.

Humbly sheweth—

That of this date [insert date in margin] A. B., on the application of C. D., was appointed by your Lordships to be judicial factor on the estate of the deceased E. F. to carry into effect the purposes of his trust disposition and settlement, dated [insert dates], as set forth in the petition, to which reference is made, and having found caution in the usual form, entered upon the duties of his office, which he continues to discharge.

That the said A. B., as judicial factor foresaid, duly lodged with the Accountant of Court an inventory of the estate committed to his management, and has lodged periodical accounts of his intromissions from the date of his appointment down to which have been audited and approved of by the Accountant of Court.

That the cautioner for the said A. B. was the said deceased G. H., conform to bond of caution, dated [Here specify death of the truster, G. H., and the names of his trustees, together with the deed by which they were nominated, and also that on the death of G. H. new caution was found for the factor's intromissions. The new cautioner's name should also be given and date of his bond.] The bond of caution of the said G. H., however, still remains with the Accountant of Court, and his estate still remains liable thereunder. The petitioners have applied to the judicial factor to present the usual note to obtain your Lordships' authority to authorise delivery of the said G. H.'s bond of caution to the petitioners, but he has not seen proper to do this.

That in consequence of the death of the said G. H., and in view of the winding up of his estate, the petitioners are desirous of obtaining delivery of the bond of caution granted

by him in this factory, and this application is presented for the purpose.

[The prayer will be for intimation and service on eight days' inducie, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, to remit to the Accountant of Court for report, and upon consideration of the report of the Accountant of Court, and after such inquiry as your Lordships may think necessary, to grant warrant and authority to the Accountant of Court to deliver up said bond to the petitioners, and to decern [here insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of inducie, remit to Accountant.

On Accountant's report being lodged, order bond of caution to be delivered up, with expenses out of the estate.

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14. NOTE FOR A JUDICIAL FACTOR ON THE ESTATE OF A DECEASED PERSON FOR SPECIAL POWER TO SELL HERITAGE.

[The original petition herein was presented by creditors under the 164th Section of the Bankruptcy Act.]

[Refer in margin to date of boxing of the original petition.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Note for A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., was of this date [insert date in margin], on the application of E. F. & Co., creditors of the said deceased C. D. to the amount required by law, appointed,

under section 164 of the Bankruptcy (Scotland) Act, 1856, judicial factor on the estate of the said deceased C. D., who died on or about

That the petitioner, having found caution, entered upon the duties of his office as judicial factor foresaid, and continues to discharge the same.

That the judicial factor now finds it necessary to apply to your Lordships for special powers. On he lodged with the Accountant of Court a note setting forth the circumstances rendering such powers necessary, and craving the Accountant of Court to report whether in his opinion special power should be given to him, as judicial factor foresaid, to [here state powers wanted].

By opinion, dated , the Accountant of Court has stated as his opinion that [here state effect of Accountant's opinion].

The said note and opinion are produced, and are printed as an appendix hereto.

That the judicial factor is desirous of obtaining from your Lordships the special powers above noted, in accordance with the said note and relative opinion.

[Here insert name of cautioner for the petitioner.]

[The prayer will be for intimation and service on eight days' induciæ, including service on the cautioner, and will thereafter proceed]: and on resuming consideration hereof, with or without answers, to grant warrant to and authorise the said A. B., as judicial factor foresaid, to [here insert powers craved in full], and to decern [here insert crave for expenses]; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

1. Note to the Accountant of Court by factor.
2. Opinion by Accountant thereon.

PROCEDURE.

Intimation and service.

On expiry of the induciæ, grant prayer, with expenses.

15. Petition of a Judicial Factor on the Trust Estate of a Deceased Person for Exoneration and Discharge.

[Refer in margin to date of boxing of petition for appointment.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That of this date [insert date in margin] the petitioner was appointed judicial factor on the estate of C. D. [design], upon the petition of E. F., residing [design].

That the petitioner thereafter duly found caution, and entered upon possession and management of the said trust estate. The said estate, at the date of the petitioner's appointment, amounted to £ , conform to inventory given up by him. This sum he has since accounted for to the beneficiaries under the trust disposition and settlement of the said C. D., conform to discharge by them herewith produced, and an account of his intromissions will be lodged in the course of the proceedings to follow hereon. The whole estate having now been distributed, except a small sum to meet the estimated expense of the present application, the petitioner's duties have come to an end, and he desires to be judicially exonered and discharged, and to have his bond of caution delivered up.

The cautioner for the petitioner is [insert the cautioner's name].

[The prayer will be for intimation and service on all persons interested, and also on the cautioner on an induciæ of eight days, and will thereafter proceed]: and thereafter, upon resuming consideration hereof, with or without answers, to remit the accounts of the petitioner, as judicial factor foresaid, to the Accountant of Court to examine and report thereon, and to exoner and discharge the petitioner of his whole actings, intromissions, and management, as judicial factor foresaid, and to grant warrant to the Accountant of Court to deliver up to the petitioner his bond of caution, and to decern [here insert crave

for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, remit to Accountant.

On Accountant's report being lodged, discharge factor and grant warrant for delivery of bond of caution.

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16. PETITION OF A JUDICIAL FACTOR ON A TRUST ESTATE FOR AUTHORITY TO CONVEY TO BENEFICIARIES, AND FOR EXONERATION AND DISCHARGE.

Division.

[Refer in margin to dates of boxing of prior petitions.]

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That of this date [insert date in margin] the petitioner was, upon the petition of C. D., appointed judicial factor upon the trust estate of E. F. The petitioner thereafter found caution in common form, and entered upon possession and management of that part of the deceased's estate which had not been distributed by the original trustees, in whose room and place he was appointed. He also lodged with the Accountant of Court an inventory of the trust estate, and he has further from time to time lodged annual accounts shewing his intromissions therewith. A continuation of the account to the present time will be produced in the course of the proceedings to follow hereon.

In the course of his administration the judicial factor found it necessary to apply for special powers by note boxed of this date [insert date in margin], and the powers asked were granted of this other date [insert date in margin]. He has

since then found it advisable to apply to your Lordships for the further special powers after mentioned, and, as a preliminary step, he of this date [insert date in margin] lodged with the Accountant of Court a report setting forth the circumstances rendering the granting of such powers expedient, and craving that authority should be granted to him to [here specify shortly powers desired], as the same is set forth in the said report (but subject always to the petitioner's commission and the expenses of this application), all as provided for by the terms of the trust disposition and settlement of the deceased C. D., an extract of which is already in process, and is respectfully referred to. By opinion dated [insert date] the Accountant of Court has recommended that the powers craved should be granted.

The said report and opinion are printed as an appendix hereto.

The petitioner therefore presents this application for authority [here specify power craved] in terms of the said opinion; and further, and in the event of the said powers being granted and carried through to the satisfaction of your Lordships, and the continuation of the factory thereby becoming unnecessary, that he should have his accounts approved of, and be exonered and discharged of his actings, intromissions, and management as judicial factor foresaid, and get delivery of his bond of caution.

The only beneficiaries on the trust estate are [specify, and also specify the petitioner's cautioner].

[The prayer will be for intimation and service on eight days' induciæ, and will thereafter proceed]: and upon resuming consideration hereof, with or without answers, to authorise the petitioner to grant a conveyance of the whole trust estate, heritable and moveable, in his hands to the said [specify disponees]; and on production by the petitioner of receipts and discharges granted by them therefor, to remit the petitioner's accounts to the said Accountant of Court to inquire into and report thereon, and thereafter to exoner and discharge the petitioner of his whole actings, intromissions, and management as judicial factor foresaid; and to grant warrant to and ordain the Accountant of Court to deliver up to the petitioner his bond of caution, and to decern [here

insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

Report by factor and opinion by Accountant.

PROCEDURE.

Intimation and service.

On expiry of induciæ, grant powers craved and remit accounts for audit to Accountant.

On Accountant's report being lodged, discharge factor and grant warrant for delivery of bond of caution, with expenses.

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17. PETITION BY A JUDICIAL FACTOR ON A TRUST ESTATE FOR RECALL OF FACTORY, DISCHARGE, AND DELIVERY OF BOND OF CAUTION.

Division.

[Refer in margin to date of boxing of original petition for appointment of judicial factor and any subsequent petitions.]

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That of this date [insert date in margin] the petitioner, A. B., was, on the application of C. D. [design], appointed judicial factor on the trust estate of the deceased E. F., who died on .

That the petitioner, having found caution (his cautioner being), entered upon the duties of his office as judicial factor foresaid, and has continued to discharge the same down to this date [insert date in margin].

That the purposes of the trust created by the trust disposition and settlement of the said E. F. [insert here date of trust disposition, and date of recording same] are [here insert leading provisions of trust disposition and settlement].

That the debts and funeral expenses of the truster, and the legacies bequeathed by him, were duly paid. [Here insert name of person or persons entitled to or who have received payment of the capital or residue of the estate.]

That the petitioner has now paid over the whole trust estate under his charge to [insert name of person or persons entitled to or who have received payment of the capital or residue of the estate], conform to discharge granted by them in his favour, dated , and herewith produced.

That this application is now presented to your Lordships in order that the factory may be recalled, and that the petitioner and his cautioners may be exonered and discharged, and warrant granted for delivery of his bond of caution.

[The prayer will be for intimation and service on eight days' induciæ, to all concerned, including cautioner, and will thereafter proceed]: and upon resuming consideration hereof, with or without answers, to recall the said factory, and to remit to the Accountant of Court to examine and report upon the accounts of intromissions and actings of the petitioner as judicial factor foresaid; and on consideration of the Accountant's report, to exoner and discharge the petitioner of the whole actings, management, and intromissions had by him as judicial factor foresaid; and to grant warrant to the Accountant of Court to deliver up the petitioner's bond of caution, and to decern [here insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, recall factory and remit to Accountant.

On Accountant's report being lodged, discharge factor and grant warrant for delivery of bond of caution, with expenses.

18. Petition of a Judicial Factor on a Deceased Person's Estate which consisted of a Share in a Lease of a Restaurant, Licensed Premises, and Goods in a Store belonging to the Restaurant, for Special Powers.

Division.

[Refer in margin to date of boxing of original petition.]

Unto the Right Honourable the Lords of Council and Session.

The Petition of G. H. [*design*], judicial factor on the estate of the deceased C. D. [*design*],

Humbly sheweth—

That upon the application of A. B., your Lordships were of this date [insert date in margin] pleased to appoint the petitioner to be judicial factor on the said deceased C. D.'s interest as tenant in the lease of the heritable subjects situated in , and known as the restaurant, and the whole stock, plant, and fittings contained in the said restaurant, as well as the moveables in store at [specify], conform to the inventories produced in process, with the usual powers, and so far as necessary thereto to sequestrate the estate of the deceased C. D.

The petitioner duly found caution, extracted his appointment, and entered upon the management of the estate so sequestrated.

Part of the said estate consists of stock, goods, and effects, at present lying in the restaurant, and those aforesaid. The said stock, goods, and effects, inventories of which are produced and referred to, include large quantities of silver and steel goods, plated articles, linen, wines, cigars, cigarettes, cheeses, provisions, fruit, and other articles of a perishable nature. The premises where the goods are lying are damp, and the goods and stock are not stored in a way fitted to preserve them, with the result that they are rapidly deteriorating in value. In particular, serious loss is being incurred by the deterioration of the large stock of cigars and provisions which has been lying in the premises for the last [specify period]. In view of the quality and class of goods forming the stock, the removal of the goods to, and their proper storage in, another store, would involve considerable expense, and having regard to the condition of the goods, it

is doubtful whether proper storage can be found to prevent the articles from further rapidly deteriorating in value.

It is also desirable in the interest of the estate that the heritable subjects should be let. To enable these subjects to be let on advantageous terms, it is necessary that the stock and goods at present therein should be removed.

The petitioner believes that it is urgently required in the interest of the estate and all parties concerned therein, that the whole goods and effects in the said premises should be sold at the earliest possible date, and the proceeds consigned in Court, and that the premises should be let.

The present application is accordingly made for special powers to enable the petitioner to sell the goods and effects mentioned in the prayer hereof, and under reservation of all questions regarding the petitioner's liability under the alleged lease in favour of the deceased C. D. to grant, or concur in granting, a lease or sub-lease of the heritable subjects for the current year, or for such period and on such terms as the beneficial management of the estate requires.

[If proprietor of heritage consents to sale insert here.]

That E. F., who is proprietor of the premises in and in right of the lease entered into by the said deceased C. D., and to whose hypothec the goods in the said premises are subject, consents to the goods being sold by the petitioner for behoof of whom it may concern, and to the premises being let on the most advantageous terms that can be obtained, conform to letter from his agents (or other consent) herewith produced. The other respondents, however, refuse or delay to agree to the proposed realisation or sub-letting.

The only other persons known to the petitioner who are interested in the estate are [specify].

The petitioner's cautioner is [specify].

[The prayer will be for intimation and service on eight days' induciæ on all concerned, and also on the cautioner, and will thereafter proceed]: to remit to the Accountant of Court for inquiry and report; and thereafter, on resuming consideration hereof, with or without answers, to authorise the petitioner to expose for sale by public roup, or to sell by private bargain, the whole stock and effects contained in the said restaurant in [specify], as well as the moveables in the store at [specify], conform to

the inventories produced in process, and under reservation of all questions regarding the petitioner's liability under the alleged lease in favour of the said A. B., to grant, or concur in granting, a lease or a sub-lease of the said heritable subjects [specify] for the current year, or for such period and on such terms as the beneficial management of the estate requires, the said lease or sub-lease to contain such clauses as are usual and necessary, and to decern [here insert crave for expenses]; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service to parties interested, including cautioner.

On expiry of induciæ, and if no answers lodged, remit to Accountant as to powers.

Grant or refuse according either to the nature of Accountant's report, or as the result of a discussion on the cause before the Lord Ordinary.

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19. PETITION OF A JUDICIAL FACTOR ON THE SEQUESTRATED TRUST ESTATE OF A DECEASED PERSON FOR RECALL OF SEQUESTRATION AND DISCHARGE AS FACTOR.

[Refer in margin to date of boxing of original petition.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of G. H. [*design*],

Humbly sheweth—

That the late A. B., hereafter called the testator, died on or about , leaving a trust disposition and deed of settlement, dated , by which he disponed and assigned to [insert names of trustees] and the survivors

and acceptors, or survivor and acceptor of them, as trustees, All and Sundry [here state provisions of trust disposition].

Of this date [insert date in margin] C. D., being at that time sole surviving trustee, the said remaining trustees having died, your Lordships, upon the petition of E. F., sequestrated the said trust estate of A. B., the testator, and appointed the petitioner, G. H., judicial factor thereon, with the usual powers. The petitioner, the said G. H., having found caution, entered upon the possession and management of the estate, and has regularly given up accounts which have been audited by the Accountant of Court.

When the petitioner, G. H., was appointed judicial factor, the trust estate included the testator's [here specify the trust estate which was put under the authority of the judicial factor, and any powers obtained or acts performed by the factor under the authority of the Court, or other acts of administration in the factory; also if estate has been distributed and wound up, or any other reason for recall of the sequestration of the trust estate]. In these circumstances, the petitioner, G. H., desires that the sequestration of the estate should be recalled, and he, as factor therein, should be judicially discharged.

[Here state names of parties having interest in the estate, and on whom service must be made; also insert name of cautioner.]

[The prayer will be for intimation and service on eight days' induciæ, and will thereafter proceed]: and on resuming consideration hereof, with or without answers, to recall the sequestration of the trust of the said deceased A. B., and to approve of the whole actings, management, and intromissions had by the petitioner, the said G. H., as judicial factor, and to exoner and discharge him of all such actings, management, and intromissions, and to grant warrant to authorise and ordain the Accountant of Court to deliver up to the said petitioner, G. H., his bond of caution, and to decern [here insert crave for expenses], out of the trust estate; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ.

Recall sequestration, and remit accounts to Accountant.

On Accountant's report being lodged, discharge factor and grant warrant for delivery of bond of caution, with expenses.

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20. PETITION BY TRUSTEES IN A TRUST ESTATE FOR AN ORDER (UNDER THE JUDICIAL FACTORS ACT, 1889) ON THE ACCOUNTANT OF COURT TO SUPERINTEND THE ADMINISTRATION OF A TRUST (UNDER SECTION 18 OF THE SAID ACT).

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of [*design trustees*], trustees and executors under the general trust disposition and settlement of the deceased A. B. [*design*], dated

Humbly sheweth—

That the said A. B. died on leaving a trust disposition and settlement, dated the day of and registered in the books of Council and Session the day of whereby he nominated the petitioners to be his trustees and executors.

The petitioners accepted of said offices and were duly confirmed as executors, conform to confirmation by the Sheriff of at dated the day of .

The purposes of the said trust disposition and settlement are [state shortly].

The petitioners have given up an inventory of the personal estate of the testator, and there is herewith produced a copy of confirmation in their favour and of the relative inventory. The amount of the personal estate given up in the inventory is £ . The heritable estate as given up amounts to [specify details].

The petitioners have proceeded in the administration of the trust estate in accordance with the directions in the trust

disposition and settlement. They have paid the debts of the testator, so far as known to them, and the special legacies in the settlement. [If any annuity exists, insert here.] They have also paid, and are continuing to pay, the annuity of £ to the testator's widow, in terms of the direction of the said settlement. They have realised part, and are in process of realising the remainder, of the estate, in terms of a direction in the said settlement, which is in the following terms:—[state terms].

At the time of his death the testator held shares in the . There was also due to him by the said company a sum of £ . The bank held the testator's guarantee for payment of a special loan of £ to the said company, and the petitioners paid that sum to the bank as a debt of the testator. The company thereafter paid to the petitioners the sum or £ leaving the sum of £ now due by the company to the trust estate.

The testator had been connected with the business of the for a period of years, and he made special provision in his said trust disposition and settlement in regard to his shares and interest in the said company. This provision is in the following terms:—[state terms of provision].

Securities of the value of about £ have been set aside to meet the sum of £ held for and to account of the respective sums of £ to be held for each of and in liferent for their respective alimentary uses allenarly, and for behoof of their respective issue in fee, whom failing, as mentioned in the said trust disposition and settlement.

The petitioners desire to have their administration of the estate, so far as it relates to the investment and distribution thereof, placed under the superintendence of the Accountant of Court, in terms of section 18 of the Judicial Factors (Scotland) Act, 1889, and accordingly present this application.

[The prayer will be for intimation and service on all having interest, on eight days' induciæ, and will then proceed]: and thereafter, on resuming consideration hereof, to grant an order on the Accountant of Court to superintend the petitioner's administration of the estate of the said A. B., in so far as it relates to the investment of the said estate and the distribution

thereof among the creditors of the deceased and the beneficiaries under the said trust disposition and settlement, in terms of the provisions of the said section of the said Act [here insert crave for expenses]; or to do otherwise in the premises as to your Lordships shall seem just.

According to Justice, &c.

PROCEDURE (IF UNDEFENDED).

Intimation and service.
On expiry of induciæ.
Order for supervision granted.

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21. NOTE BY A FACTOR *Loco Absentis* FOR AUTHORITY TO MAKE UP TITLE IN HIS OWN NAME AS FACTOR AND SELL HERITABLE SUBJECTS.

[In this case the factor had not asked for or obtained the opinion of the Accountant as to powers craved.]

[Refer in margin to date of boxing of original petition.]

Division.

Note for A. B. [*design*], factor *loco absentis* to C. D. [*design*],

Humbly sheweth—

That the said A. B. was of this date [insert date in margin] appointed factor *loco absentis* to the said C. D., and that, having found caution, he entered upon the said office and possession of the factory estate. The said C. D.'s estate, as mentioned in the petition for appointment, consisted of [specify].

[Here state the circumstances rendering application for special powers necessary.]

The factor *loco absentis* is now desirous that your Lordships should grant special power to him as factor *loco absentis* to complete in his own name as such factor a title to the said subjects, and thereafter to sell and convey the same to the purchaser.

The nearest relatives of the said C. D. are [specify relations and also cautioner for factor].

[The prayer will be for intimation and service on eight days' induciæ on all concerned, including the cautioner, and will then proceed]: and on resuming consideration hereof, with or without answers, to grant warrant to authorise and empower the said , as factor *loco absentis* foresaid, to make up and complete in his own person as factor *loco absentis* a title or titles to the said heritable subjects, viz. [here describe heritage]; and further, to grant warrant to authorise and empower the said A. B. as factor *loco absentis* foresaid, on the said title being completed as aforesaid, and after a remit to the Accountant of Court, or such other inquiry as to your Lordships shall seem fit, to sell the same by public roup, after due advertisement, at the upset price of £ , and if not sold at or above said upset price to re-expose the same at such reduced upset price as may be fixed by the Accountant, and on a sale and payment of the price to grant a disposition thereof containing all usual and necessary clauses, and to grant all other deeds requisite or necessary for rendering such sale effectual, and to decern; and further [here insert crave for expenses]; or to do further or otherwise as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ.

Grant power to make up title and remit to Accountant as to power of sale.

Grant (if Accountant's report is favourable), with expenses.

22. NOTE FOR A JUDICIAL FACTOR ON THE ESTATES OF A COMPANY FOR AUTHORITY TO COMPLETE TITLE TO HERITAGE AND SELL.

Division.

[Refer in margin to date of boxing of original petition.]

Unto the Right Honourable the Lords of Council and Session.

Note for A. B. [*design*],

Humbly sheweth—

That of this date [insert date in margin] the petitioner, A. B., was, on the petition of C. D. and others, appointed judicial factor on the estates of [fill in name of company]. The judicial factor duly found caution, extracted his appointment, and entered upon the duties of his office.

That the estate under the management of the judicial factor consists, *inter alia*, of [state estate under the management of the factor, and necessity for the special powers craved on the prayer being granted].

That the circumstances are fully set forth in a report by the judicial factor to the Accountant of Court, which is printed in the appendix hereto. The opinion of the Accountant thereon is also printed in said appendix hereto.

The judicial factor's cautioner is [insert cautioner's name].

[Here insert names of partners of company and other persons interested.]

[The prayer will be for intimation and service on partners of company and all others interested on eight days' induciæ, and will thereafter proceed]: and thereafter, upon resuming consideration hereof, with or without answers, to grant warrant to and authorise the said A. B. (*first*) to complete a title *habili modo* in his person as judicial factor foresaid to All and Whole [specify area of ground or other heritable subjects]; (*second*) to expose for sale by public roup, after due advertisement, the said heritable subjects [add if necessary] with fixed and moveable machinery, plant, and furniture therein, as detailed in the valuation by [insert name of valuator] at the upset price of £ sterling, and if not sold at or above that price, to expose for sale the said heritable subjects and others at the reduced upset price of £

sterling; and if not sold to re-expose the same for sale at the further reduced upset price of £ sterling; and if not sold, to again expose the same for sale, after further advertisement, at such reduced upset prices, and in such manner as the Accountant of Court may fix; and upon a sale or sales, and payment of the price or prices, to grant a conveyance or conveyances to the purchaser or purchasers, and to execute all deeds usual and necessary, and to decern; and [here insert usual crave for expenses]: or to do further or otherwise as to your Lordships may seem proper.

According to Justice, &c.

APPENDIX.

1. Report by factor.
2. Opinion thereon by Accountant.

PROCEDURE.

Intimation and service.
On expiry of induciæ.
Grant, with expenses.

---

23. PETITION BY A JUDICIAL FACTOR ON THE ESTATE OF DECEASED PERSON UNDER THE 164TH SECTION OF THE "BANKRUPTCY (SCOTLAND) ACT, 1856," FOR DISCHARGE.

[In this case the representatives of the deceased concurred in the petition for appointment.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner was of this date [insert date in margin], on the application of C. D., creditor of the deceased E. F., with consent and concurrence of [specify names and relationship of persons concurring in petition], appointed judicial factor on the estate of the said deceased E. F., under and by virtue of section

164 of the "Bankruptcy (Scotland) Act, 1856," with the usual powers; and having found caution, he entered upon the management of the estate, and proceeded to realise the same.

The petitioner, in terms of the Act of Sederunt of 25th November, 1857, lodged an inventory of the estate and states of his intromissions from the date of his appointment to [date of close of accounts]. The Accountant of Court, having examined and audited the said states of intromissions, issued a report thereon to the effect that he had found them correctly stated and vouched.

The petitioner thereafter, in obedience to the said Act of Sederunt, prepared a state of funds, state of claims, and scheme of division thereof, and submitted the same to the Accountant, who of this date [insert date in margin] reported to your Lordships that, in his opinion, the said state of funds, state of claims, and scheme of division, might, after the usual statutory intimations, be approved of, and payment authorised in accordance therewith.

The requisite advertisements having been inserted in the *Edinburgh Gazette*, dated [date of *Gazette* notice], and the usual circulars having been sent to the creditors, the Lord Ordinary officiating on the Bills of this date [insert date in margin] approved of the said scheme of division, and authorised payment to be made in terms thereof.

The petitioner, having accordingly made payment to the creditors as authorised, brought down his state of intromissions to this date [insert date in margin], and lodged it with the Accountant, who, on examination, found it correctly stated and vouched. The whole estate available for division having now been distributed, the petitioner is desirous to be judicially exonered and discharged of his office of judicial factor, and to have his bond of caution delivered up.

The following persons are, to the best of the petitioner's knowledge and belief, the legal representatives of the deceased, and, as such, interested in the administration of the estate:—[state representatives].

In terms of section 28 of the said Act of Sederunt, the petitioner produces herewith report by the Accountant of Court, dated [insert date], stating that, in his opinion, on the factor presenting his petition for discharge, and making the usual statutory intimations, he may be exonered and discharged of his whole actings and intromissions, and warrant

granted for delivery of his bond of caution. The cautioner for the petitioner is [insert name of cautioner], Edinburgh.

[The prayer will be for intimation, service, and advertisement in the *Gazette*. Service will be on all concerned, including the cautioner. The induciæ is fourteen days, and the prayer will then proceed]: and upon resuming consideration hereof, with or without answers, and of said report by the Accountant of Court, to exoner and discharge the petitioner and the said [cautioner's name] of the whole actings, intromissions, and management had by the petitioner under the factory, and to grant warrant to and ordain the Accountant of Court, or other custodier, to deliver up the petitioner's bond of caution, and to decern; to find the petitioner entitled to the expenses of this application; or to do otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement in *Gazette*, and service ordered (fourteen days).

Grant discharge and delivery of bond, with expenses.

I.—GENERAL POINTS IN ALL PETITIONS FOR FACTORS AND CURATORS.

1. Petition must be printed and boxed to the Court. If it is desired that petition be out in the roll of first enrolments for the following day, it should be boxed before twelve o'clock. If boxed after that hour it will not appear on the roll until the second day after boxing. The boxing of the petition brings it out in the roll. It does not require to be enrolled.

2. A copy of the first deliverance, written on a print of the petition, and certified by the Clerk, is the warrant for service. When a petition is served by post by the agent, the execution of service may be written on a copy of the petition, with copy deliverance annexed, without procuring same certified, but in cases of personal service, acceptance of

service, and where the petition is served by a messenger-at-arms, the execution or acceptance of service must be written on a certified copy. When service of the petition and deliverance is accepted by an agent on behalf of any respondent it must be done by an Edinburgh agent, and be either holograph or tested.

3. When the petition has been returned to process, with acceptances or execution of service, the following certificate should be written thereon:—

"I, , hereby certify that the foregoing petition, with deliverance thereon, has been duly intimated on the walls and in the minute book in common form, and served upon all the respondents, conform to the foregoing execution or acceptances of service, that the induciæ have expired, and that no answers have been lodged."

4. In the case of a factory where advertisement is ordered in the *Gazette*, add, "advertised conform to advertisements herewith produced."

5. All interlocutors pronounced in petitions before the Junior Lord Ordinary may be reclaimed against within eight days.

6. When expenses are found due in a petition they are usually remitted to the Auditor for taxation. The account may be lodged in the Bill Chamber and taxed by Auditor, but no report or decree for taxed costs is necessary.

7. The Accountant of Court, in course of an audit of factorial accounts, sometimes makes a remit to the Auditor to tax expenses in the factory, but the usual practice now is for the Lord Ordinary to do so.

8. During vacation all petitions falling to be dealt with by the Junior Lord Ordinary are disposed of every lawful day in Chambers by the Lord Ordinary officiating on the Bills. A daily roll is made up by the Clerk of the Bills of all motions to be made, and hearings are fixed when necessary in all cases where petitions and answers have to be disposed of, or where any points in regard to petitions require explanation or discussion before the Lord Ordinary on the Bills. It may also here be noted that all orders in Outer House or Inner House, petitions, notes, &c., requiring despatch in vacation are made by the Lord Ordinary on the Bills on application by any of the Clerks of the Court before whom such petitions, notes, &c., depend.

II.—Special Points in Petitions for Appointment of *Curator Bonis* to an Incapax or Minor.

1. All the next-of-kin of the ward, who are not petitioners, should be called as respondents. In petitions of this nature in practice an induciæ of eight days is held to be sufficient even when edictal service is necessary. Personal service of the petition and deliverance must be made on the ward, unless it is shewn that such service would be dangerous or unnecessary, in which case service is specially dispensed with.

2. In the case of a petition for appointment of a *curator bonis* to an incapax, certificates by two independent medical men must be produced and printed as an appendix to the petition. The certificates should be in the forms printed at page 98. When not in such form they require to be amended before the appointment is made. Each of the two medical men should make his examination outwith the presence of the other, although it is not necessary to state the fact in the certificate.

3. Upon the expiry of the induciæ a print of the petition, with deliverance, execution, or acceptance of service on behalf of all the respondents, and certificate of intimation on the walls, &c., should be lodged in process, and the petition enrolled, and when no answers are lodged for any of the respondents the appointment is made as a matter of course. It is only in exceptional cases where a party other than a domiciled Scotsman is appointed to the office.

4. A domiciled Englishman has been appointed to the office of *curator bonis*, but such an appointment is of very rare occurrence. In such a case, certain conditions are imposed by the interlocutor appointing him to the office. The person appointed, before extracting his appointment, is required to lodge in the hands of the Clerk of Court a special bond of caution, binding himself to lodge accounts annually with the Accountant of Court, and otherwise to conduct the affairs of the curatory in all respects in conformity with the law and practice of Scotland; to appear before the Lords of Council and Session in Scotland to answer for his conduct as *curator bonis*, or in connection with any matter whatever arising out of the said curatory; to submit himself to, and prorogate the jurisdiction of the Court of Session for said purpose; and to assign a place

in Scotland as a domicile where he may be cited to appear before the said Court to answer in the premises.

In very rare and exceptional cases a lady has been appointed *curator bonis*.

5. A petitioner's agent has been appointed a *curator bonis* to a ward, but in such a case he will only be entitled to commission, and will not be entitled to charge any of the law costs incurred in the later stages of the petition, after his appointment, out of the estate. This occurs occasionally when the estate is small.

6. When answers are lodged for the ward, or for any of the other respondents, the petition and answers are put to the roll for hearing. The Lord Ordinary usually remits petition and answers, where the parties are at issue as to the mental condition of the alleged incapax, to a medical officer of the Board of Lunacy to examine the ward, and report to the Court.

7. It is only on very special cause shewn that an interim appointment of *curator bonis*, pending the currency of intimation and service, is made in petitions of this kind. When such an appointment is made the reading of the decree in the minute book is dispensed with, and immediate extract ordered. This enables the *curator bonis* to obtain an extract of his appointment as soon as caution has been found.

8. When no interim appointment is made as above, the *curator bonis* cannot extract his appointment as curator for eight days, even although he has within that time lodged his bond of caution.

9. Caution must be found within one calendar month from the date of the appointment, otherwise it falls (sec. 2 of the Act of Sederunt of 11th December, 1849). In that case the petition should again be enrolled for a fresh appointment of the same curator. But

10. The petition may be enrolled any time before the lapse of the calendar month and the Court moved for a prorogation of the time for finding caution.

11. The bond of caution is prepared by the agent, and after it has been executed and attested, should be lodged with the Accountant of Court in terms of the Act of Sederunt of 15th July, 1904, along with the process.

12. Where a private cautioner without limitation is proposed, the Accountant of Court shall, on the bond of caution

being delivered to him, and on being satisfied as to its form and due execution, and as to the sufficiency of the cautioner, make a marking on the margin of the interlocutor sheet to the effect that caution has been received, adding his signature and the date; and such marking shall be an authority for extract of the appointment.

13. In the case of a curatory when the value of the estate is over £5000, and when the cautioners offered are private parties, two are usually required.

14. Bonds of caution by Insurance Companies are now accepted, if approved of by the Accountant of Court, in place of those by private individuals.

15. Where it is proposed that the caution be limited by the Court, as authorised by sec. 27 of the Pupils Protection Act, 1849, whether in the case of a private cautioner or of a public company, the Accountant of Court shall, after such inquiry as he thinks requisite, report on the proposed limitation to the Lord Ordinary, who may approve of or vary the limitation proposed without enrolment or motion, unless any party having interest shall have intimated to the clerk of the process that he desires to be heard.

16. In nearly all cases where the value of the estate is of great amount, but particularly in all cases where Insurance Companies are cautioners, the amount of the caution is fixed by the Accountant without an enrolment as above.

17. During the subsistence of a factory the Accountant may, with the approval of the Lord Ordinary, which may be obtained without enrolment or motion, call upon the factor to increase the amount of the existing cautionary bond, or to find new or additional caution, or to procure a company bond in substitution for or in addition to that of an existing private cautioner; and the Accountant may, with the like approval, authorise the factor to decrease the amount of the existing caution.

18. After the Accountant has approved of the caution, whether limited or unlimited, he, on the expiry of eight days from the date of the appointment, will call on the agent for petitioner to transmit process to extractor, retaining bond of caution in his own custody.

19. When the process is transmitted to the extractor for extract, the agent should see on getting up his extract from the extractor that the process is re-transmitted to the Bill

Chamber. The process is a continuing one, and subsists until the *curator bonis* has been discharged.

20. The Accountant shall, in January yearly, prepare and submit a list of approved guarantee companies for the consideration and approval of the Court.

21. The Accountant of Court now allows as a charge against the factory estate (1) the premium paid by the factor where a company bond of caution has been accepted, or such part thereof as he deems proper, and (2) the expense of the necessary procedure in obtaining the approval of a bond of caution or the limitation of the amount; but the fact of such charge can be taken into account by the Accountant of Court in fixing the factor's remuneration.

22. The law Court stamp of 10s. on the bond of caution hitherto affixed in the offices of the clerks of the First or Second Division is now adhibited in the office of the Accountant of Court.

23. The expression "judicial factor" in the Act of Sederunt of 15th July, 1904, relative to finding of caution in judicial factories includes *curator bonis*, factor *loco tutoris*, factor *loco absentis*, and factor on trust or other estates, and also includes guardians where caution is required, and the above rules as to caution shall not affect the procedure as to bonds of caution in bankruptcy and in the liquidation of public companies.

24. The *curator bonis* is appointed to his offices "with the usual powers," which include all ordinary acts of administration. When, however, he desires special powers (such as power to complete title to property, to sell, to enter into any agreement on behalf of his ward, to encroach on the capital of ward's estate for his maintenance, &c., or in fact to do anything which is not included under his ordinary powers) he must apply to the Court for special powers. The power to complete title can be got without the authority of the Accountant of Court, but when further powers are craved, such as sale, borrowing, making advances out of capital, &c., these are almost always got by submitting to the Accountant of Court a report setting forth the circumstances and obtaining the opinion of that official thereon. A note is then printed and boxed to the Court, craving, *inter alia*, power either to make up title and sell, or any other powers wanted, and the curator's report and Accountant's opinion

are printed as an appendix to the note. The note must be served on the cautioner. The principal note and a copy are lodged in the original curatory proceedings, and do not require to be lodged as a new or a separate process.

25. Upon the expiry of the inducie the powers craved are granted by the Lord Ordinary if the Accountant of Court's report has been favourable. The curator should extract after the lapse of eight days.

26. The *curator bonis* may from time to time during the subsistence of the curatory present similar notes as occasion requires.

27. On the death of a *curator bonis* a petition should be presented for appointment of a new *curator bonis* and for the discharge of the representatives of the deceased curator. The petition requires to be served upon all the original petitioners, respondents, and cautioner (other than those who are not petitioners in the application). The procedure in the application for new appointment is the same as in the original petition. No new medical certificates are required unless a long period of time has supervened since the original appointment, in which case they may be deemed necessary.

28. When the appointment of the new *curator bonis* is made a remit is also made to the Accountant of Court to examine and audit the accounts of the late *curator bonis*, and to report. On the estate being handed over to the new *curator bonis* the Accountant reports on the discharge, and the petition should be enrolled for the discharge of the late *curator bonis* and his representatives and delivery of bond of caution. The report by the Accountant of Court should be sent by the agent to the Lord Ordinary the night before the petition appears in the roll. The process should, on the expiry of eight days, be transmitted to the extractor for extract. When the extract is obtained it should be exhibited to the Accountant of Court, which is his warrant for delivering up the late curator's bond of caution. It is very rarely, and that on special cause shewn, that a bond of caution will be got up from the Accountant of Court on a certified copy interlocutor granting discharge.

29. When a ward has recovered he can present an application for recall of the curatory and discharge of the *curator bonis*. With the petition he presents certificates by two

medical gentlemen (*see* form, page 99). The original petitioners and respondents should all be called as respondents. When the induciæ have expired and no answers have been lodged, the curatory is recalled and a remit made to the Accountant of Court to examine the accounts of the *curator bonis*, and to report. When the Accountant issues his report the petition should be enrolled for discharge, and the report sent to the Lord Ordinary as before. When decree has been granted it falls to be extracted and bond of caution got up as in No. 27.

30. When a ward dies or when the minor comes of age, the duties of the *curator bonis* are at an end. The *curator bonis* should then present a petition for his discharge, calling as respondents the original petitioners, respondents, and the cautioner. The procedure is the same as set forth in No. 27.

31. In making up a title to heritable estate the curator will make it in name of the ward where he or she is in minority or pupillarity, while in the case of an incapax the curator will make up and complete a title in his own name as *curator bonis*.

32. When any of the respondents in a petition for appointment of a *curator bonis* object to the nominee of the petitioner as curator it is not necessary to lodge answers. Either a minute may be lodged, or compearance may be made at the bar when the appointment is craved. In such cases it is usual for the Lord Ordinary to appoint a neutral person as *curator bonis*.

33. In cases where a portion of the curatorial estate consists of Bank of England stock, the bank will only allow the dividends being uplifted by the *curator bonis* on production of a second extract of the decree of appointment with the annexed certificate appended, and also having the seal of Court affixed thereto:—

"EDINBURGH [place and date].—I hereby certify that what is contained in this and the preceding pages is an official extract of the appointment of as *curator bonis* to , and the judge who appointed the said *curator bonis* [ ] made the said appointment on the ground of the disability of the said through mental incapacity, duly certified by two properly qualified medical men. Further, that as the mental incapacity of

Mr. still exists the *curator bonis* continues to administer the estate."

[Signed by Clerk of the Bills.]

34. Where a sale of Bank of England stock belonging to a curatory estate must be made, this can only be done by obtaining a vesting order in the curator in the High Court of Justice in England.

III.—Special Points Regarding Appointments of Judicial Factors, Factors *Loco Absentis*, &c.

1. The names of all parties interested in the estate which is proposed to be put under factorial supervision must be inserted in the petition and service craved upon them.

2. Point 3 of special points in curatorial petitions applies equally to factorial applications.

3. If answers are lodged to the petition for factor the case is at once put out in the Bill Chamber Roll, heard, and disposed of. *See* point 32 in curatorial practice as to objections to petitioner's nominee. The same practice prevails also in these petitions.

4. Interim appointments of factors are only made in case of urgency, such as a licensed or going business, or during the running of contracts where wages have to be paid, &c. In all such interim appointments the reading in the minute book is dispensed with.

5. As in curatories, the appointment of a factor can only be extracted in eight days, unless the reading in minute book has been dispensed with.

6. Caution must be found in one calendar month; for "curator" read "factor" and for "ward" read "estate." *See ante* 11 to 23 inclusive of points in curatorial petitions which are also applicable to applications for factors.

7. Points 24 to 29 of curatorial petitions equally apply to factories as regards administration, special powers, application for new judicial officer on death of predecessor in office.

8. When the factor's duties are ended he applies for his discharge. The procedure is the same as in point 28 *ante*.

9. When a factor resigns office, either he or some person interested presents a petition for new factor, and for discharge of resigning factor. All parties interested must be called, including cautioner, and after induciæ expire a new factor is

appointed, a remit of resigning factor's accounts is made to Accountant, and on his report (if favourable) being received, discharge is granted, with warrant for delivery of bond of caution.

IV.—Special Points in Petitions for Appointment of Factors under 164th Section of Bankruptcy Act.

The procedure in applications for the appointment of judicial factors on the estates of deceased persons under the 164th section of the Bankruptcy (Scotland) Act, 1864, is noted below—

1. The petitioners may be one or more creditors of the party deceased to the amount of £100, or any persons having an interest in the succession of the deceased, in the event of the deceased having left no settlement appointing trustees or other parties having power to manage his estate, or in the event of such parties not accepting or acting.

2. The petition should state who the legal representatives of the deceased are, their degree of relationship, or their interest in the succession. It should also contain a list of the creditors.

3. The petition must be served upon all the representatives of the deceased who are not parties to the petition.

4. The induciæ of service of the petition are fourteen days.

5. Intimation requires to be made in the *Edinburgh Gazette* in the form of No. II. Schedule to Act of Sederunt of 1857.

6. On the expiry of the induciæ, and when the intimations and *Gazette* are lodged, the Court will make the appointment.

7. Before extracting the appointment the judicial factor requires to find caution. The time for finding caution is limited to twenty-one days, unless otherwise expressed in the interlocutor appointing the judicial factor.

8. When the judicial factor desires special powers the same rules apply as in the case of curatories in manner set forth at head 15, page 140.

9. When the judicial factor has prepared his scheme of division, and the Accountant of Court has issued his report thereon, he transmits to each party who has lodged a claim a notice to the effect that the state of funds and report have been lodged in Court, also inserting a notice in the *Gazette* (form No. IV., Act of Sederunt of 1857).

10. Objections to the state of funds and scheme of division must be lodged within twenty-one days from the last date of notice (Sec. VIII., Act of Sederunt of 1857).

11. The petition should, on the expiry of the twenty-one days, be enrolled, and when no objections are lodged the Court will approve of same and authorise the judicial factor to distribute the amount of the dividend in accordance with the scheme of division.

12. When objections are lodged the Court will dispose of them on hearing.

13. Before applying for his discharge the judicial factor must obtain a report by the Accountant. This report he must present along with his petition for discharge. The petition requires to be intimated to the representatives of the deceased, and a notice inserted in the *Edinburgh Gazette* (No. V., Act of Sederunt of 1857). After the expiry of the induciæ (fourteen days) the judicial factor is discharged and warrant granted for delivery of his bond of caution.

II.—ENTAIL PETITIONS.

1. Petition for Authority to Record Deed of Entail.

[Presented under the Act 1685, cap. 22, and subsequent statutes.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That of this date C. D. executed a disposition and deed of entail, by which he granted and disponed [here state the destination and lands].

That the said disposition and deed of entail contains prohibitory and other clauses, and an express clause authorising registration in the Register of Entails, in terms of "The Titles to Land Consolidation (Scotland) Act, 1868," sec. 14.

That your petitioner, who is the institute of entail in possession under the said disposition and deed of entail, is desirous of having the said disposition and deed of entail recorded in the Register of Entails, in terms of the Act 1685, cap. 22, and subsequent statutes thereanent, and for this purpose he makes the present application to your Lordships.

May it therefore please your Lordships to interpone authority to the said disposition and deed of entail, and to grant warrant to and ordain the Keeper of the Register of Entails to record the same in the said Register of Entails, in terms of and to the effect contained in the said Acts of Parliament; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

Procedure.

The prayer is granted *de plano* and the following interlocutor is pronounced:—

"The Lord Ordinary, having considered the petition and

proceedings, interpones authority to the disposition and deed of entail, No. of process; grants warrant to and ordains the Keeper of the Register of Tailzies to record the same in the said register in terms of and to the effect contained in the Act 1685, cap. 22, and decerns."

A copy of this interlocutor, written on a print of the petition and certified by the clerk, is a sufficient warrant for the Keeper of the Record of Entails to record the deed of entail. The decree does not require to be extracted.

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2. Petition to Record Entail Presented by Trustees who had Executed a Deed of Entail under the provisions of a Trust Disposition and Settlement. The Institute of Entail was a Concurring Party to the Petition.

[Presented under the Act 1685, cap. 22, and subsequent statutes.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*] and others [*design*], the surviving and assumed trustees of the late C. D., Esquire, , in the county of , who died on the day of , acting under his trust disposition and deed of settlement and codicils thereto, dated respectively the day of , the day of , the day of , and the day of , and all recorded in the Division of the General Register of Sasines applicable to the county of , on the day of , and also in the Sheriff Court books of , on , with the consent and concurrence of E. F., of , in the county of .

Humbly sheweth—

That on the and days of years, the said A. B. and others, as trustees foresaid, executed a

disposition and deed of entail by which they, as trustees foresaid, conveyed to and in favour of the said E. F., as institute, and the heirs male of his body, whom failing to the heirs mentioned therein, All and Whole the towns and lands of [name lands], all lying within the parish of and sheriffdom of , as contained and described in the said deed of entail, which is herewith produced.

The said disposition and deed of entail contains an express clause authorising registration of the same in the Register of Tailzies, in terms of the Titles to Land Consolidation (Scotland) Act, 1868, sec. 14.

The petitioners, with the consent of the said E. F., who is the heir of entail in possession under the said disposition and deed of entail, are desirous of having the said disposition and deed of entail recorded in the Register of Tailzies, in terms of the Act 1685, cap. 22, and subsequent statutes thereanent, and for this purpose make the present application to your Lordships.

May it therefore please your Lordships to appoint this petition to be intimated upon the walls and in the minute book in common form; and on resuming consideration of this application, to interpone authority to the said disposition and deed of entail, and to grant warrant to and ordain the Keeper of the Register of Tailzies to record the same in the said register, in terms of the said Acts of Parliament; or to do otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Order of intimation.

On expiry of induciæ, decree in terms of prayer.

A copy of the interlocutor, written on a print of the petition and certified by the clerk, is a sufficient warrant for the Keeper of the Record of Entails to record the deed of entail. The decree does not require to be extracted.

3. Petition to Disentail where Consents Required.

[Presented under 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner is heir of entail in possession of the entailed lands and estates of and others, lying in the shires of , under and by virtue of the following deeds, viz.:—[state granter of deed, destination, and date of recording].

That the petitioner is infeft in the said entailed lands and estates conform to [state infeftment].

That by the 2nd section of "The Entail Amendment Act, 1848," 11 & 12 Vict. cap. 36, it is enacted [take in section].

That by the 4th section of "The Entail Amendment Act, 1853," 16 & 17 Vict. cap. 94, it is enacted [take in section].

That by the 4th section of "The Entail Amendment Act, 1875," 38 & 39 Vict. cap. 61, it is enacted [take in section].

That by the 12th section of "The Entail (Scotland) Act, 1882," 45 & 46 Vict. cap. 53, it is enacted [take in section].

That by the 13th section of the said "Entail (Scotland) Act, 1882," it is enacted [take in section].

That the petitioner is desirous of obtaining the authority of your Lordships to record in the Register of Tailzies an instrument of disentail of the portions which are specified in the schedule hereto annexed, of the said entailed lands and estates of and others.

That the petitioner is of full age, was born on the day of , and is not subject to any legal incapacity.

That the heir next in succession to the petitioner is his eldest son [name and designation], residing at , who is heir-apparent under the said disposition and deed of entail, and the two nearest heirs of entail who are for the time entitled to succeed to the said entailed lands and estates immediately after the said [first heir] in their order successively

are:—(1) [name and designation], and (2) [name and designation], who are also sons of the petitioner, and reside at

That the said [first heir] is in minority, and it will therefore be necessary for your Lordships to appoint a curator *ad litem* to him. A deed of consent by him and the curator *ad litem* to be appointed to him will be produced in the course of the proceedings to follow hereon, failing which the value in money of the expectancy or interest in the said portions of the said entailed lands and estates of the said [first heir], with reference to this application, will be ascertained and provided for in terms of the said 13th section of the said "Entail Amendment (Scotland) Act, 1882." The said [second heir] is also in minority, and the said [third heir] is in pupillarity, and it may therefore be necessary for your Lordships to appoint a curator and tutor *ad litem* to them.

That the petitioner will, in terms of the 5th sub-section of the 12th section of the said "Entail Amendment (Scotland) Act, 1875," produce a schedule setting forth the entailer's debts, or other debts, and the provisions to husbands, widows, or children (if any) affecting, or that may be made to affect the fee of the said entailed lands and estates, or the heirs of entail that are not secured by having been placed on the record.

That the petitioner makes the present application to your Lordships under and in terms of the Acts 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.

May it therefore please your Lordships to appoint this petition to be intimated on the walls and in the minute book in common form, and to be advertised once in the *Edinburgh Gazette* and once in the [here name some newspaper published or circulating in the county or counties where the entailed estates are situated], or in such other newspaper or newspapers as to your Lordships shall seem proper; and to grant warrant for serving the same upon the said [here fill in names of three next heirs], and to appoint them to lodge answers thereto, if so advised, within seven if within Scotland, and fourteen days if furth thereof; and further, to appoint a curator *ad*

litem to the said [first heir], and, if your Lordships think proper, a curator and a tutor *ad litem* to the said [second and third heirs]; and on resuming consideration of this petition, and after such inquiry and report as to your Lordships shall seem proper, to find that the procedure has been regular and proper, and in conformity with the statutes and relative Acts of Sederunt; and to interpone your Lordships' authority, and to approve of the foresaid instrument of disentail, and to grant warrant to and authorise and ordain the Keeper of the Register of Tailzies to record the same in the said register, in terms of the statutes, and to decern; or to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, appointment of curators and tutor *ad litem*, and remit to man of business, and, if necessary, to an actuary.

On deed of consent by next heir being lodged, or value of his expectancy provided for, decree in terms of report by man of business.

Decree extracted in duplicate, and instrument of disentail recorded.

Note.—The foregoing is a form of an application where the entail is an old one, and where the consent of the next heir only is required. The paragraphs in the petition relating to the three next heirs, where more than one consent is required, will vary according to the circumstances of each application.

4. Petition to Disentail where no Consents required.

[Presented under 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 38 & 39 Vict. cap. 61.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner is heir of entail in possession of the entailed lands and estate of , in the parish of , and county of , under and by virtue of a disposition and deed of entail dated , made and granted by [name of granter] to and in favour of [state destination].

That the petitioner is infeft in the said entailed lands and estate by virtue of [state infeftment].

That by the Act 11 & 12 Vict. cap. 36, intituled "An Act for the Amendment of the Law of Entail in Scotland," it is, *inter alia*, enacted (sec. 1) that [take in section].

That by the Act 16 & 17 Vict. cap 94, intituled "An Act to extend the benefits of the Act of the eleventh and twelfth years of Her present Majesty, for the Amendment of the Law of Entail in Scotland," it is enacted (sec. 4) that [take in section].

That the petitioner is desirous, under the authority of your Lordships, of acquiring in fee simple the said entailed lands and estate, and for this purpose will, as empowered by the said Act 16 & 17 Vict. cap. 94, sec. 4, produce to your Lordships an instrument or instruments of disentail of the said lands and estate, duly executed by him, for approval of the same, and for authority to have the same recorded in the Register of Tailzies, in terms of the Act thereanent.

That the petitioner is of full age, having been born on and is not subject to any legal incapacity. The said deed of entail was executed after the said 1st day of August, 1848, and the petitioner having been born after the date thereof, no deed of consent by any of the next heirs of entail is necessary to the granting of the present application.

That the three nearest heirs who, at the date of presenting this petition, are for the time entitled to succeed to the said

entailed lands and estate in their order successively immediately after the petitioner are—(1) [name and design]; (2) [name and design]; (3) [name and design]. They are all of full age and subject to no legal incapacity.

That the petitioner will produce, in the course of the proceedings to follow hereon, a schedule in terms of the 12th section of the Act 38 & 39 Vict. cap. 61, intituled "The Entail Amendment (Scotland) Act, 1875," sub-sec. 5, setting forth the entailer's or other debts, and provisions to husbands, widows, or children, if any, affecting or that may be made to affect the fee of the said entailed lands and estate, or the heirs of entail that are not secured by having been placed on record.

The procedure in this application is regulated by the Entail Acts and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof]: and thereafter, upon resuming consideration hereof, and after such inquiry into the facts and such other procedure as to your Lordships shall seem proper, to find that the procedure under the application has been regular and proper and in conformity with the provisions of the said Entail Acts and relative Acts of Sederunt; to approve of the foresaid instrument or instruments of disentail, and to grant warrant to and ordain the Keeper of the Register of Tailzies to record the said instrument or instruments of disentail in the said Register of Tailzies, in terms of the said Entail Acts and relative Acts of Sederunt; or to do further or otherwise in the premises as to your Lordships shall seem proper; and to decern.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of inducia, remit to man of business.

Decree in terms of report by man of business.

Decree extracted in duplicate and instrument of disentail recorded.

Note.—The foregoing is a form of an application where the entail is a new one and petitioner born after the date thereof.

5. Petition by the Trustee on a Sequestrated Estate for Authority to Disentail.

[Presented under 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*], trustee on the sequestrated estates of C. D., Esquire, of , in the county of ,

Humbly sheweth—

That the estates of C. D., Esquire, of , in the county of , were sequestrated by the Lord Ordinary on the Bills, in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, on [insert date of sequestration], and the petitioner was of this date [insert date in margin] elected trustee thereon, and duly confirmed, conform to act and warrant of confirmation in his favour granted by the Sheriff-Substitute of the county of , dated [insert date]. An abbreviate of said confirmation was recorded in the Register of Abbreviates of Adjudications on [insert date].

That the said estates were sequestrated in respect of a debt incurred after the passing of the Entail (Scotland) Act, 1882.

That the said C. D. is institute of entail in possession of the entailed lands and estates of [insert name], in the county of , and is infeft therein under and in virtue of a disposition and deed of entail, dated [insert date], and recorded in the Register of Tailzies [insert date of recording], and in the Division of the General Register of Sasines applicable to the county of [insert county] for publication, and in the books of Council and Session for preservation [insert date], granted by the said C. D. in favour of himself, whom failing, in favour of [insert destination in deed of entail].

The said C. D. is also institute of entail in possession of the entailed lands of [specify], in the county of , under the said disposition and deed of entail.

That by the Act 11 & 12 Vict. cap. 36, intituled "An Act for the Amendment of the Law of Entail in Scotland," it is enacted (sec. 1) [take in section].

That by the said Act 11 & 12 Vict. cap. 36, it is enacted (sec. 3 as amended by the Entail Amendment (Scotland) Act, 1875, and the Statute Law Revision Act, 1892) [take in sections].

That by the Act 45 & 46 Vict. cap. 53, intituled "An Act to Amend the Law of Entail in Scotland," it is enacted (sec. 3) [take in section].

That by the said Act 45 & 46 Vict. cap. 53, it is enacted (sec. 12) that [take in section].

That by sec. 13 of the last-recited Act it is enacted that [take in section].

That by sec. 18 of the said Act it is enacted that [take in section].

That the petitioner desires to avail himself of the provisions of the Acts of Parliament before recited, and to obtain the authority of your Lordships to an instrument of disentail of the said entailed lands and estate of [insert name of lands] being executed and recorded in the Register of Tailzies.

That the said C. D. is of full age, having been born on [date]. That the next heir of entail entitled to succeed immediately after the said C. D. to the said entailed lands and estate is E. F. [specify next heir, and whether in minority or of full age]. That the next two heirs of entail entitled to succeed to the said entailed lands and estate, in their order successively after the said C. D. and E. F., are [specify names, &c., of second and third heirs, and state if in pupillarity or minority].

That the said [here again specify whether the next heir is major or in pupillarity or minority, and if so, crave that a separate tutor or curator be appointed to each. If in pupillarity or minority, the following clause may go in]:—That deeds of consent by the tutors *ad litem* for the said three next heirs [if in pupillarity] will be produced in the course of the proceedings to follow hereon; failing which, the value in money of their respective expectancies or interests in the said entailed lands and estate of [insert name of lands] with reference to this application will be ascertained and provided for in terms of sec. 5 of the said Act 38 & 39 Vict. cap. 61, and secs. 13 and 18 of the said Act 45 & 46 Vict. cap. 53.

That a schedule in terms of the 12th section of the said Act 38 & 39 Vict. cap. 61, sub-sec. 5, will be produced setting forth the amounts of any entailer's debts, or other

debts, or provisions to husbands, widows, or children (if any) affecting, or that may be made to affect, the fee of the estate, or the heirs of entail, which are not secured by having been placed on record.

That the petitioner makes the present application to your Lordships under and in terms of the Acts of Parliament 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service on induciæ of seven and fourteen days, and will then proceed]: and upon the expiry of three months from and after the date of the order for intimation, to appoint a separate tutor *ad litem* to each of [here specify three heirs next in succession]; and thereafter to appoint intimation in terms of sec. 18 of the said Act 45 & 46 Vict. cap. 53, to be made to the said [insert three next heirs], and their respective tutors *ad litem;* and on resuming consideration hereof, and after such procedure and inquiry into the facts as your Lordships shall deem necessary, to find the procedure to have been regular and proper and in conformity with the provisions of the statutes and relative Acts of Sederunt, and in the event of the tutors *ad litem* for the said [insert names of three next heirs], or any of them, refusing or delaying to execute and deliver to the petitioner a deed of consent or deeds of consent to this application in the form prescribed by the Entail Acts, to ascertain the value in money of the expectancy or interest in the said entailed estate of [name of lands] of each of the said [insert three next heirs], or of such of them as may be necessary in consequence of the refusal or delay of their respective tutors *ad litem* to execute and deliver a deed or deeds of consent, and to ordain the said C. D. to grant a bond and disposition in security, or bonds and dispositions in security, with consent of the petitioner, over the said entailed estate for the amount or respective amounts so ascertained, in favour of the said [insert names of three next heirs], or such of them as may be entitled to such bond or bonds and dispositions in security, and for the amount or respective amounts to which they may

severally be found to be entitled, and if he shall refuse or fail to do so within such time as may be fixed by your Lordships, to grant authority to the Clerk of Court to execute such a bond and disposition in security, or bonds and dispositions in security, and thereafter to interpone your Lordships' authority thereto; and to ordain the said C. D. to execute, with the consent of the petitioner, an instrument of disentail of the said lands and estate of [insert lands], and if he shall refuse or fail to do so within such time as may be fixed by your Lordships, to grant authority to the Clerk of Court to execute such instrument of disentail; and thereafter to approve of such instrument of disentail, and to grant warrant to and ordain the Keeper of the Register of Tailzies to record the same in the said Register in terms of the statutes; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

After lapse of three months from order for intimation.

Appoint intimation to three next heirs (if major), and if in pupillarity or minority, appoint separate tutors or curators *ad litem* to such of them as are in pupillarity or minority.

Then appoint intimation to heirs or tutors (as case may be) in terms of sec. 18 of the Act 45 & 46 Vict. cap. 53.

Remit to man of business and actuary (where necessary) to value heir's expectancy.

If consent refused, fix amount of heir's interest in estate in terms of report of man of business and actuary, and order deeds to be executed.

6. Petition for Authority to Restrict Younger Children's Provisions and Widow's Annuity.

[Presented under 11 & 12 Vict. cap. 36, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the entailed estate of , in the parish of , and county of , under and in virtue of a disposition and deed of entail granted by [specify deed or deeds of entail].

That the petitioner is duly infeft in the said entailed estate, conform to decree of special and general service in his favour by the Sheriff of Chancery [specify date of recording of service].

That the petitioner is of full age, and is not subject to any legal incapacity. He was born on [specify date of birth].

That by the said deed of entail there is reserved to the heirs of entail who should succeed to the lands, teinds, and others forming the estate of power to provide their lawful children (other than the heir succeeding to the said lands, teinds, and others) in such portions and provisions as they should think fit, not exceeding, in case there should be three or more children other than such heir, years' free rent of the same, after deducting always feu-duties and all other legal and annual burdens, excepting liferents to widows or widowers, and any debts contracted for improvements and buildings under the Act of Parliament 10 Geo. III. cap. 51. It is further thereby provided that such portions are to bear interest only after the granter's death.

That by bond of provision, dated , and recorded in the books of Council and Session on , C. D., Esquire, of , who was at the date of said bond heir of entail infeft and in possession of said entailed estate, bound and obliged himself and the

heirs of entail succeeding to him therein to content and pay to and among such of his children, viz., [specify children], all hereinafter designed, not succeeding to the said entailed lands and estate, as should be alive at the time of his death, the sum of £ [here specify provisions], payable one year after his death, with a fifth part more of penalty in case of failure, and the interest of the said provision at the rate of £5 per cent. per annum from the time of his death to the foresaid term of payment, and thereafter, during the not payment thereof, and that in such portions as he might appoint by any writing under his hand, and failing such appointment, then to his said children equally amongst them share and share alike.

That the said C. D. died on . He was survived by the petitioner, who is his eldest son, and by his other children mentioned in the preceding paragraph of this petition.

He left a trust disposition and settlement, dated , together with a writing entitled, "Instructions to my Trustees," dated , both recorded in the books of Council and Session on , whereby he conveyed his whole estate, heritable and moveable, to the trustees therein named. Copies of these documents are herewith produced and referred to for their terms. The parties named as trustees by the said C. D. having declined to accept office, your Lordships appointed E. F. to be judicial factor upon the estates of the said C. D.

The amount of the said provision of £ exceeds the amount of the provision with which, in terms of the said deed of entail, the said C. D. was entitled to charge the heirs succeeding him in the said entailed estate, as appears from the detailed statement of rental and deductions, being statement No. 1 printed in the Appendix hereto. According to that statement, the free yearly rental of the said estate for the year , being the year in which the said C. D. died, amounted to £ , so that, instead of the said sum of £ , the utmost amount with which the said C. D. could competently burden the heirs of entail succeeding to said estate by way of provision to younger children was £ .

That by the said deed of entail there is reserved to the heirs of entail who should succeed to and be infeft in the said

entailed estate, full power and liberty to grant liferent infeftments out of the said estate by way of annuity only, to the wives of their presumptive or apparent heirs who might happen to be married during their lifetime and possession of the said estate, and which liferents should not exceed one-fifth part of the free yearly rent thereof, after deducting feu-duties and all legal public burdens. It is by said deed of entail declared that in case the said annuities thereby allowed, and the yearly interest that might be payable on provisions to younger children thereinafter mentioned, should together, at one and the same time, exceed the half of the said yearly rent, then and so long as the same might continue to be the case, each of the three higher annuities therein mentioned should suffer a reduction proportional to their several amounts, so that one-half of the free yearly rents of the said estate should always remain to the heir of entail in possession for the time.

That by bond of corroboration and disposition in security and bond of annuity, dated , G. H., who was then heir of entail in possession of said estate, bound and obliged himself, as such heir of entail, and the respective heirs of tailzie and provision succeeding to him in the said estate, duly and validly to make payment to I. J., wife of K. L., his eldest son and heir-apparent, in case she should survive him, yearly and each year during all the days of her life after the decease of the said K. L., of a free liferent annuity of £ , restrictable as mentioned in said deed of entail. The said annuity was, in terms of said deed of entail, validly charged on said estate.

That the said K. L. died on , and was survived by the said I. J. [specify address].

That, as is shewn by the statement of rental and deductions, being statement No. 2 printed in the Appendix hereto, the said annuity of £ , and the yearly interest payable on provisions provided to younger children under said deed of entail, together exceed the half of the yearly rent of the said estate by £ . If it should be found by your Lordships that the amount with which the said C. D. could competently burden the heirs of entail succeeding to said estate by way of provision to younger children exceeds £ , then the sum by which the said annuity of

£ , together with the yearly interest payable on provisions provided to younger children under said deed of entail is greater than the half of the yearly rent of said estate, and will exceed £ . In order, therefore, that the petitioner may enjoy one-half of the free yearly rents of the said lands, teinds, and others, it is necessary that the said annuity should be restricted.

That the petitioner is desirous to have the amount of the said provisions to the younger children of his father and of the said annuity ascertained and settled.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, for the appointment of a curator *ad litem* to minor heirs, and will then proceed]: and on resuming consideration hereof, with or without answers, and after such inquiry into the facts of the case as to your Lordships shall seem necessary, and on being satisfied that the procedure under this petition has been regular and in conformity with the provisions of the said Acts and relative Acts of Sederunt—(*first*) to fix the amount with which the said deceased C. D. could competently burden the heirs of entail in the said estate of , with provisions in favour of the said [specify beneficiaries in bond of provision]; (*second*) to find that the said provisions ought to be restricted to the sum so fixed; (*third*) to find that the annuity payable to the said I. J. ought to be restricted to the sum authorised by the said deed of entail, and to fix the restricted amount of said annuity; (*fourth*) to find that so far as the said provisions and annuity exceed the amounts so to be fixed by your Lordships, the same are null and void, and of no force or effect, as affecting the petitioner and the succeeding heirs of entail in the said estate, and to order, declare, and restrict accordingly; or to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

APPENDIX.

1. *Statement No. I.*

Statement of rental of estate of and deductions to be made therefrom for the calculation of provisions to the younger children of the deceased C. D.—

Gross rental of estate for year , conform to rental herewith produced, less value of mansion-house and policies, - - - - £

Deductions—

[Here specify same], - £

——— £

Free annual rental of estate, - - £

2. *Statement No. II.*

Statement of rental of estate of and deductions to be made therefrom for the calculation of the annuity payable to I. J.—

Gross rental as in Statement No. 1, - £

Deductions—

[Here specify same], - £

——— £

Net rental, - - - - £

One-half whereof is, - - £

Interest on £ , being provisions, already secured on the estate, as per note herewith produced, - - -£

Interest on £ , being four years' rent at £ as shewn in preceding statement, £

——— £

£

PROCEDURE.

Intimation, advertisement, and service.
Appointment of curator *ad litem*, if necessary.
On expiry of induciæ.
Remit to man of business.
Decree in terms of report by man of business.
Extract decree, and record instrument of disentail.

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7. PETITION FOR AUTHORITY TO DISENTAIL AND TO UPLIFT CONSIGNED MONEY.

[Presented under 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, and relative Acts of Sederunt, by an heir of entail in possession, born prior to 1st August, 1848. Consent of next heir and of tutors to second and third heirs of entail to be got to disentail, or if not, interests were to be valued.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the entailed lands and estate of , in the parish of , and county of , under and by virtue of [here specify deed or deeds of entail, destination, and recording].

The petitioner is duly infeft in the said entailed lands and estate, conform to [here specify decrees of service, &c., under which petitioner holds lands].

That the Railway Company, in pursuance of the powers contained in Railway Act, have taken absolutely certain portions of the said entailed lands of above described. The sum payable for the said portions of land, and for damages and injury done to the other lands belonging to the petitioner as heir of entail foresaid, has been fixed at £ , conform to decree-arbitral pronounced in terms of "The Lands Clauses Consolidation (Scotland) Act, 1845," by [insert names of arbiters and date of decree].

The said sum of £ has been consigned by the

said Railway Company in the Bank, , subject to the order and control of your Lordships; and the consignation receipt therefor, which is dated , or a copy thereof, will be produced in the course of the proceedings to follow hereon.

That by the Act 11 & 12 Vict. cap. 36, it is enacted, sec. 3 [take in section], and by sec. 26 [take in section].

That by the Act 16 & 17 Vict. cap. 94, it is enacted, sec. 4 [take in section].

That by the Act 38 & 39 Vict. cap. 61, it is enacted, sec. 5 [take in sec. 5, sub-sec. 1].

That by the Act 45 & 46 Vict. cap. 53, it is enacted, sec. 12 [take in section].

That the petitioner desires to take advantage of the provisions of the statutes before recited, and to acquire the said entailed lands and estate in fee simple, and to uplift and acquire the said consigned money, with the interest accrued thereon. An instrument of disentail of the said entailed lands and estate will be produced in the course of the present application.

The petitioner was born on the day of , and is accordingly of full age, and is not subject to any legal incapacity.

The three heirs of entail next entitled to succeed to the said entailed estate in their order successively after the petitioner are [fill in names of three next heirs].

The said [insert name of first heir] is of full age, and not subject to any legal incapacity. The said [insert names of second and third heirs, and if in pupillarity or minority insert the following] are in pupillarity, and have no legal guardian other than their father, the said . It will therefore be necessary that your Lordships appoint tutors *ad litem* to the said in the course of the proceedings to follow hereon.

The petitioner will produce, in the course of the proceedings to follow hereon, a deed or deeds of consent duly executed by the said and by the tutors *ad litem* to be appointed to the said , failing which the values in money of the expectancies or interests of the said three next heirs respectively, with reference to this application, will be duly ascertained and provided for.

The petitioner will produce, in the course of the proceedings

to follow hereon, a schedule of debts and provisions signed and deponed to by her in terms of the Act 38 & 39 Vict. cap. 61, sec. 12, sub-sec. 5.

The procedure in this application is regulated by the Entail Acts and by the relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service on the three next heirs, the railway company, and the bank, on an induciæ of seven or fourteen days, and, if necessary, for appointment of tutors *ad litem* to minor heirs, and will then proceed]: and on resuming consideration hereof, with or without answers, and after such inquiry as to the facts of the case as to your Lordships shall seem necessary, and on being satisfied that the procedure has been regular and proper, and in conformity with the provisions of the statutes and relative Acts of Sederunt, to approve of the foresaid instrument of disentail, to grant warrant to and authorise the Keeper of the Register of Tailzies to record the same in the said Register in terms of the statutes, and to grant warrant to and authorise the petitioner to uplift and acquire in fee simple the said sum of £ deposited in the said Bank, Limited, with the whole interest due and to become due thereon, and for that purpose to grant warrant to and ordain the said Bank to make payment to the petitioner of the said sum of £ , with any interest that may have accrued thereon, on her granting a valid receipt therefor; and further, to find the said Railway Company liable in the expenses of the present application in so far as the same relates to the said consigned money; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, appointment of tutors *ad litem*, and remit to a man of business, and, if necessary, to an actuary.

Of consent, or on payment of expectancy, decree in terms of report by man of business.

Extract in duplicate, and record instrument of disentail.

8. Petition for Authority to Record Instrument of Disentail, and to Acquire and Uplift Consigned Money.

[Presented under 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt. In this petition two sums were consigned—(1) a sum agreed to be taken in compensation for an obligation by a railway company to make a road, and (2) a sum fixed under the Lands Clauses Act as the value of the land taken by the railway company.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the entailed lands and estates of [describe lands and county in which situated] under and in virtue of a disposition and deed of entail made and executed by C. D. [Specify deed of entail, by whom granted, destination, and subjects conveyed.]

That by minute of agreement, dated , between E. F., then heir of entail in possession of the said entailed lands and estates, and the Railway Company, the said company, in contemplation of the construction of the railway authorised by "The Railway Act, ," became bound, *inter alia*, to form and provide, as an accommodation work, a sufficient road from farm steading to certain fields on the said entailed estate of ; and that on [date] the said company agreed with the said E. F. to pay to her the sum of £ in lieu of their forming and providing the said road, and in discharge of their said obligation to do so, which sum was accordingly paid by the said company to the said E. F. on , and was of this date [date] consigned in the Bank in name of [names of consignees].

That the said Railway Company having acquired certain parts and portions of the said entailed lands and estates, and certain rights in or concerning the same, for the purposes of their undertaking authorised by "The Railway Act, ," the purchase money or compensation

payable therefor was fixed by two valuators appointed in terms of "The Lands Clauses Consolidation (Scotland) Act, 1845," at the sum of [insert second consigned sum], which sum was of this date [date] consigned in the Bank in name of the petitioner, subject to the orders of the Court of Session.

That by the Act 11 & 12 Vict. cap. 36, intituled "An Act for the Amendment of the Law of Entail in Scotland," it is enacted, sec. 2 [take in section].

That by sec. 26 of the said Act 11 & 12 Vict. cap. 36, it is enacted, *inter alia* [take in section].

That by the Act 16 & 17 Vict. cap. 94, intituled "An Act to extend the benefits of the Act of 11th and 12th years of Her present Majesty for the Amendment of the Law of Entail in Scotland," it is enacted, sec. 4 [take in section].

That the petitioner is desirous of availing himself of the provisions of the foresaid Acts of Parliament to the effect of disentailing and acquiring in fee simple the said entailed lands and estates of and others, being the whole subjects described in the said disposition and deed of entail first above mentioned, and the said disposition under fetters of entail, all so far as not already disentailed, and of obtaining payment of the said sums of £ and £ consigned as aforesaid, together with such additional sum, if any, as may prove to be due by the Railway Company on the re-measurement of the said lands, all as belonging to himself in fee simple, and with this view he makes the present application to your Lordships in terms of the before-mentioned statutes and of the Acts 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt, for approval by your Lordships of an instrument of disentail of the said entailed lands and estates and others, to be produced in the course of the process to follow hereon, and for authority to have the same recorded in the Register of Tailzies in terms of the said statutes, and also for warrant and authority for payment to him of the said sums of £ and £ consigned as aforesaid.

That the petitioner was born on [insert date], and is not subject to any legal incapacity, and the heir next in succession to him in the said entailed lands and estates and others is his

eldest son and heir-apparent, G. H. [insert here name and designation of next heir], who was born on .
The said G. H. is not subject to any legal incapacity, and is the only heir of entail whose consent is required to the present application. The petitioner will produce, in the course of the proceedings to follow hereon, the requisite deed of consent by him.

That the two nearest heirs for the time entitled to succeed to said entailed lands and estates and others in their order successively, immediately after the said C. D., are [specify two next heirs, and whether major or in minority].

That the petitioner will produce, in the course of the proceedings to follow hereon, a schedule in terms of sub-sec. 5 of the 12th section of the said Act 38 & 39 Vict. cap. 61.

[The prayer will be for intimation, advertisement, and service of seven and fourteen days, and will then proceed]: and thereafter, upon resuming consideration of this petition, with or without answers [here insert crave for curator *ad litem* to any minor heir], and after such further procedure as your Lordships shall direct, to approve of the said instrument of disentail, and grant warrant to and authorise and ordain the Keeper of the Register of Tailzies to record the same in the said Register in terms of the said statutes, and to grant warrant and authority to and in favour of the petitioner for payment to him of the said sums of £ and £ consigned as aforesaid, and of such additional sum, if any, as may prove to be due by the said railway company on the re-measurement of the said lands, all as belonging to himself in fee simple in terms of the said statutes, and to ordain the Bank to pay over to the petitioner the said consigned sums, with all interest that has accrued or may accrue thereon; and further, to find the said Railway Company liable in the expenses of uplifting the said consigned money and incident thereto; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of inducia, remit to man of business, and appointment of curators (if necessary).

Decree in terms of report by man of business.

Extract decree in duplicate, and record instrument of disentail.

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9. PETITION BY THE PROPRIETOR IN POSSESSION OF AN ENTAILED ESTATE, BORN BEFORE 1ST AUGUST, 1848, FOR AUTHORITY TO DISPONE HIS ENTAILED LANDS AND ESTATE IN FAVOUR OF HIMSELF AND CERTAIN HEIRS OF AND SUBSTITUTES OF ENTAIL.

[Presented under 11 & 12 Vict. cap. 36, secs. 2 and 4, 16 & 17 Vict. cap. 94, sec. 5, 38 & 39 Vict. cap. 61, sec. 4, and 45 & 46 Vict. cap. 53, sec. 12.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B., Esquire, of [name of estate], and residing at

Humbly sheweth—

That the petitioner is heir of entail in possession of the entailed lands and estates of [specify lands, parish, and county in which situated], under a disposition and deed of entail [here specify deed or deeds of entail, name of granter, date or dates of same, and also when and where recorded and destinations thereof].

That the petitioner succeeded to the said entailed lands and others above referred to under the said disposition and deed of entail upon the death of C. D. [name of last entail proprietor], and is now infeft therein, conform to [here specify petitioner's title].

That by the Act 11 & 12 Vict. cap. 36, intituled "An Act for the Amendment of the Law of Entail in Scotland," it is enacted (sec. 2) that [take in section].

That by the Act 16 & 17 Vict. cap. 94, intituled "An Act to extend the benefits of the Act of the 11th and 12th years of Her present Majesty for the Amendment of the Law of Entail in Scotland," it is enacted (sec. 5) that [take in section].

That by the Act 38 & 39 Vict. cap. 61, intituled "An Act to further Amend the Law of Entail in Scotland," it is enacted (sec. 4) that [here take in section].

That by the Act 45 & 46 Vict. cap. 53, intituled "An Act to Amend the Law of Entail in Scotland," it is enacted (sec. 12) that [take in section].

That the petitioner was born before 1st August, 1848, and is of full age and subject to no legal incapacity. That the three heirs entitled to succeed to the said lands and estates of [specify], next in their order after the petitioner, are as follows, viz.:—[here specify three next heirs and their designations, and whether of full age or in pupillarity or minority].

That the petitioner makes the present application to your Lordships for authority to dispone the said entailed estates, in terms of a disposition and deed of entail by the petitioner in favour of himself and the substitutes therein mentioned, of the whole of the entailed lands and estates [if any fee simple lands or estate are to be included in this disposition and deed of entail, this should be here stated and lands described]. The said disposition and deed of entail will be produced in the course of the proceedings to follow hereon. The petitioner desires to obtain the authority of your Lordships to record the said disposition and deed of entail in the Register of Tailzies.

[If the next heir is to consent either by himself or a curator *ad litem* on his behalf, here state that such deed of consent will be produced in process.]

That the petitioner will duly make and produce a schedule in terms of the Act 38 & 39 Vict. cap. 61, sec. 12 (sub-sec. 5), setting forth that there are no entailer's or other debts, and no provisions to husbands, widows, or children affecting, or that may be made to affect, the fee of the said lands and others, or the heirs of entail that are not secured by being placed on record.

That the petitioner makes the present application to your Lordships under and in terms of the Acts of Parliament 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 53, and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service on seven and fourteen days' induciæ, and will thereafter proceed]: and on resuming consideration hereof (and, if necessary, appointing a curator

ad litem to minor heirs), and after such inquiry as to your Lordships shall seem requisite, to approve of the disposition of the said entailed estates, and of the said disposition and deed of entail by the petitioner for carrying the same into effect, and to grant warrant to the Keeper of the Register of Tailzies to record the said disposition and deed of entail by the petitioner in the said Register, in terms of the statutes; or to do further or otherwise as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, appointment, when necessary, of a curator or curators *ad litem* to minor heirs, and remit to man of business.

If consents not produced, remit to actuary.

Decree in terms of reports.

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10. PETITION FOR AUTHORITY TO EXCAMB WHERE CONSENTS ARE REQUIRED.

[Presented under 11 & 12 Vict. cap. 36, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and relative Acts of Sederunt, and the Titles to Land Consolidation (Scotland) Act, 1868, sec. 150.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner is heir of entail in possession of the entailed lands and estates of , situated in the parish of , and county of , under and in virtue of a disposition and deed of entail made and executed by [design], to and in favour of [state destination], which disposition and deed of entail is dated the day of , and recorded in the Register

of Tailzies the day of , and in the books of Council and Session the day of .

That the petitioner is infeft in the said entailed lands and estates conform to [here state writs].

That by the Act 11 & 12 Vict. cap. 36, sec. 5, it is provided [take in section].

If a new entail, add—That by the Act 31 & 32 Vict. cap. 84, sec. 18 [take in section].

That by the Act 38 & 39 Vict. cap. 61, sec. 4, it is provided [take in section].

That by the Act 45 & 46 Vict. cap. 58, sec. 13, it is provided [take in section].

That the petitioner is of full age, and not subject to any legal incapacity. He was born on the day of .

That the three next heirs who at the date of presenting this application are for the time entitled to succeed to the said entailed lands and estates in their order successively after the petitioner are D. E., F. G., H. I. [design].

The said D. E. and F. G. are both of full age, and not subject to any legal incapacity. The said H. I. is in minority, and has no legal guardian [if otherwise, state so]. It will therefore be necessary that your Lordships appoint a curator *ad litem* to the said H. I. in the course of the proceedings to follow hereon.

That the said D. E. and F. G. are willing to consent to this application, and the petitioner will produce, in the course of the proceedings to follow hereon, deeds of consent duly executed by them.

That the petitioner is prepared to pay or to secure the value of the expectancy or interest of the said H. I. in the event of the curator *ad litem* to be appointed to him by your Lordships refusing or failing to consent to this application.

That by minute of agreement of excambion, dated , entered into between the petitioner, of the one part, and J. K., of , of the other part, the parties agreed to excamb that portion of the petitioner's land and estates of and the lands of , part of the said J. K.'s estate of therein specified, exclusive of the minerals, and that on the terms and conditions therein set forth.

The lands proposed to be excambed are equivalent, or as

nearly as may be equivalent, in value to one another, and their excambion will prove advantageous to the said entailed lands and estates of A., and to the heirs of entail succeeding thereto.

The said minute of agreement of excambion is produced herewith.

That the petitioner is therefore desirous of effecting the said excambion, and for that purpose makes the present application to your Lordships. That the petitioner will produce, in the course of the proceedings to follow hereon, a schedule of debts and provisions signed and deponed by him in terms of the Act 38 & 39 Vict. cap. 61, sec. 12, sub-sec. 5.

The procedure in this application is regulated by the Entail Acts, and especially by 38 & 39 Vict. cap. 61, sec. 12, and by the relative Acts of Sederunt, and by sec. 150 of the Titles to Land Consolidation (Scotland) Act, 1868.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, a prayer will be inserted for a curator *ad litem* to minor heirs, and will then proceed]: and on resuming consideration of this application, with or without answers, and after such inquiry as your Lordships shall judge necessary, to find that the procedure has been regular and proper and in conformity with the provisions of the statutes and relative Acts of Sederunt, to interpone authority to the proposed transaction, and to grant warrant to and authorise the petitioner to exchange the foresaid portion of the estate of A. for the foresaid lands of [J. K.'s lands], and to execute at the sight of your Lordships a contract or other deed of excambion in terms of the said minute of agreement of excambion, and in the form authorised by the 11th section of the Act 16 & 17 Vict. cap. 94, containing an entail of the foresaid lands of [J. K's lands], at present forming part of the said J. K.'s estate of , in favour of the petitioner and the heirs substituted to him under the conditions, provisions, and clauses, irritant and resolutive, contained in the said deed of entail; and on such contract being lodged in process, to grant warrant to

and ordain the Keeper of the Register of Tailzies to record the same in said Register; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

Appointment of curator *ad litem*.

Remit to man of business and man of skill.

On consent by curator or payment of expectancy by petitioner, decree in terms of reports.

On contract of excambion being adjusted and executed at the sight of the reporter, decree in terms of second report by man of business, and warrant granted to record contract in Register of Tailzies.

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11. PETITION FOR AUTHORITY TO EXCAMB (WHERE NO CONSENTS ARE REQUIRED).

[Presented under 6 & 7 William IV. cap. 42, 11 & 12 Vict. cap. 36, 38 & 39 Vict. cap. 61, and relative Acts of Sederunt, and the Titles to Land Consolidation (Scotland) Act, 1868, sec. 150.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner is the heir of entail in possession of the entailed lands and estate of , lying in the parish of , and county of , under and by virtue of disposition and deed of entail [description and destination].

The petitioner is duly infeft in the said entailed lands and estate, conform to [state infeftment].

That by the Act 6 & 7 William IV. cap. 42, secs. 3, 4, and 5 [and where more than one entail, sec. 6] the petitioner is entitled to excamb any portion of the said

entailed lands and estate, being less than one-fourth in value of such estate, and other than the principal mansion-house or offices, garden, park, lawn, home farm, or policy, for an equivalent in lands, estates, or heritages lying contiguous to the same, or to some other part of the same entailed lands or estate, and that without any consents. And it is further provided that in any such excambion, any excess of value on either side, not exceeding £200, shall be paid to the proprietor, whether heir of entail in possession or proprietor in fee simple, to whom the lands of smaller value shall be awarded.

That the petitioner is of full age, and not subject to any legal incapacity. He was born on the day of .

That the three nearest heirs of entail who at the date of presenting this application are for the time entitled to succeed to the said entailed lands and estate in their order successively after the petitioner are—(1) C. D. [design]; (2) E. F. [design]; and (3) G. H. [design].

The said C. D. and E. F. are in minority, and reside with the petitioner, who is their sole guardian and administrator-in-law. The said G. H., who resides at , is of full age, and is not subject to any legal incapacity [or as the case may be].

That by minute of agreement of excambion, dated , entered into between the petitioner on the one part and I. J. [design] on the other part, the parties agreed to excamb that portion of the petitioner's lands and estates of [name], and the lands of [name], part of the said I. J.'s estate of therein specified, exclusive of the minerals, and that on the terms and conditions therein set forth. The lands proposed to be excambed are equivalent, or as nearly as may be equivalent, in value one to another, and their excambion will prove advantageous to the said entailed lands and estates of [petitioner] and to the heirs of entail succeeding thereto. The said minute of agreement of excambion is produced herewith.

The difference in value whereby the said portion of the entailed lands and estate of [name] exceeds in value the said lands of [name I. J.'s lands] is less than £200.

The said lands of [name I. J.'s] so to be acquired by the petitioner are contiguous to his estate of [name]. The portion of his estate of [name] falling to be conveyed to the said

I. J. does not comprise the principal mansion-house or offices, or the garden, park, lawn, home farm, or policy of the said entailed lands and estates, and is of less extent than one-fourth part in value of the same. There has been no previous excambion of any portion of the said entailed lands and estate.

[If there has been a previous excambion it should be stated that the two together do not exceed one-fourth part of the estate.]

The petitioner is therefore desirous to effect the said excambion, and for that purpose makes the present application to your Lordships.

The petitioner will produce, in the course of the proceedings to follow hereon, a schedule of debts and provisions signed and deponed to by him in terms of the Act 38 & 39 Vict. cap. 61, sec. 12, sub-sec. 5.

The procedure in this application is regulated by the Entail Acts, and especially by 11 & 12 Vict. cap. 36, sec. 37, and 38 & 39 Vict. cap. 61, sec. 12, by the relative Acts of Sederunt, and by sec. 150 of the Titles to Land Consolidation (Scotland) Act, 1868.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, for the appointment of a curator *ad litem* to minor heirs, and will then proceed]: and on resuming consideration of this petition, with or without answers, and after such inquiry as your Lordships shall judge necessary, to find that the procedure has been regular and proper and in conformity with the provisions of the said Acts and relative Acts of Sederunt, to interpone authority to the proposed transaction, and to grant warrant to and authorise the petitioner to exchange the foresaid portion of the estate of [name] for the foresaid lands of [name], and to execute at the sight of your Lordships a contract or other deed of excambion in terms of the said minute of agreement of excambion, and in the form authorised by the 11th section of the Act 16 & 17 Vict. cap. 94, containing an entail of the foresaid lands of [name I. J.'s lands], at present forming part

of the said I. J.'s estate of [name], in favour of the petitioner and the heirs substituted to him under the conditions, provisions, and clauses, irritant and resolutive, contained in the said deed of entail, and on such contract being lodged in process, to grant warrant to and ordain the Keeper of the Register of Tailzies to record same in the said Register; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

Remit to man of business.

Appointment of curator *ad litem.*

Remit to man of skill.

Decree in terms of reports, and remit to man of business to adjust draft deed of excambion.

Decree in terms of second report by man of business, and authorising Keeper of Register of Entails to record deed of excambion.

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12. PETITION FOR AUTHORITY TO RESTRICT AND CHARGE ENTAILED ESTATE WITH YOUNGER CHILDREN'S PROVISIONS.

[Presented under 5 Geo. IV. cap. 87, 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the entailed lands and estate of and others, lying in the county of , under and in virtue of a disposition and deed of entail thereof, dated [here specify deed or deeds of entail and the destination, &c.].

That the petitioner is infeft in the said entailed lands and estate, conform to [specify how title is completed].

That by the 4th section of the Act 5 Geo. IV. cap. 87, entitled, "An Act to authorise the proprietors of entailed estates in Scotland to grant provisions to the wives or husbands and children of such proprietors," it is enacted [take in section].

That by bond of annuity and provision dated the day of [specify provisions of bond of annuity], and that the said provisions were granted and were to be accepted with and under and subject to the whole conditions, restrictions, and limitations contained in the said statute 5 Geo. IV. cap. 87, or any other statute or statutes relating thereto, so far as applicable to the said provisions.

That by deed of appointment executed by [specify granter of bond, and date of same, and registration], on the narrative of the said bond of annuity and provision, and that children who were at the date of the said deed of appointment not entitled to succeed to the said entailed lands and estate at death consisted of [specify], directed and appointed that [here specify provisions of bond and apportionment among younger children, also the decease of granter thereof, and state of family at date of presentation of petition].

That by the 7th section of the said Act 5 Geo. IV. cap. 87, it is enacted [take in section].

That by the 21st section of the Act 11 & 12 Vict. cap. 36—"The Entail Amendment Act, 1848"—it is enacted [take in section].

That by the 23rd section of the said Act 11 & 12 Vict. cap. 36, it is enacted [take in section].

That by the 7th section of the Act 16 & 17 Vict. cap. 94—"The Entail Amendment Act, 1853"—it is enacted [take in section].

That by the 23rd section of the said Act 16 & 17 Vict. cap. 94, it is enacted [take in section].

That by the 6th section of the Act 31 & 32 Vict. cap. 84—"The Entail Amendment (Scotland) Act, 1868"—it is enacted [take in section].

That the free yearly rent or value of the said entailed lands and estate of , after deduction of the public, parochial, and other burdens, as required by the said Act 5 Geo. IV. cap. 87, amounted, as at the said day of

, the date of the death of the said [insert name of granter of bond of annuity], to the sum of £ , and on that assumption, the said provisions payable to the said younger children amount to the sum of £ , being years' rent or value of the said entailed lands and estate.

That the petitioner proposes to charge the fee and rents of the said entailed lands and estate of , as set forth in the schedule appended hereto (other than the mansion-house, offices, and policies thereof), with the amount of the said provisions payable to the said younger children, as the same may be ascertained in the course of the proceedings to follow hereon, by granting a bond and disposition in security, or bonds and dispositions in security, in ordinary form, ranking *pari passu* with each other over the said entailed lands and estate (other than as aforesaid) for the amount of the said younger children's provisions, and that in favour of the said younger children or any other party or parties who may advance the amount of the same, or any part thereof, to enable the petitioner to settle with them, or any of them; and the present application is made to your Lordships for the purpose of obtaining authority to charge the fee and rents of the said entailed lands and estate (other than as aforesaid) with the amount of the said younger children's provisions.

That by bond of annuity for £ granted by [insert name of granter of bond] the heir-apparent entitled at the time to succeed in the said entailed lands and estate of , with consent of the said , the heir of entail in possession as tiar at the time of the said entailed lands and estate in favour of [insert name and date of bond, and also date of recording], conferred by the said Act 5 Geo. IV. cap. 87, the said "Entail Amendment (Scotland) Act, 1868," and all other powers and faculties competent to him—bound and obliged himself and the whole heirs of entail who should succeed to the said entailed lands and estate at the time, to infeft and seise the said [insert grantee], in case she should survive him, in a free yearly annuity or liferent provision of £ sterling yearly, exempted from all burdens and deductions whatsoever (except income tax), to be uplifted and taken by her during her lifetime after his decease, in case she should survive him, at two terms in the year, Whitsunday and Martinmas, by

equal portions, beginning the first term's payment thereof at the first of these terms which should happen after his death, for the half-year following, and so forth half-yearly and termly thereafter, during her lifetime, with interest and penalty as therein mentioned furth of the said lands and estate. In terms of the said "Entail Amendment (Scotland) Act, 1868," the said annuity of £ is postponed to the said provisions payable to the said younger children.

That the petitioner is of full age and not subject to any legal incapacity, and that the three nearest heirs of entail for the time entitled to succeed to the said entailed lands and estate of and others immediately after the petitioner in their order successively are [specify names of next heirs and whether any and which of them are of full age, and also those in minority].

That the petitioner will, in terms of the 5th sub-section of the 12th section of the Act 38 & 39 Vict. cap. 61—"The Entail Amendment (Scotland) Act, 1875"—produce a schedule setting forth the entailer's debts or other debts, and the provisions to husbands, widows, or children (if any) affecting, or that may be made to affect, the fee of the said entailed lands and estate, or the heirs of entail that are not secured by having been placed on the record.

That the petitioner makes the present application to your Lordships under and in terms of the Acts 5 Geo. IV. cap. 87, 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service on seven and fourteen days' induciæ, and, if necessary, for the appointment of a curator *ad litem* to minor heirs, and will then proceed]: and on resuming consideration of this petition, and after such inquiry and report as to your Lordships shall seem proper, to find that the procedure has been regular and proper, and in conformity with the statutes and relative Acts of Sederunt, and to find that the utmost amount with which the said [specify name of granter of bond of annuity] could competently, under the statute 5 Geo. IV. cap. 87, burden the heirs of entail in the said entailed lands and estate of and

others with provisions to her younger children was the sum of £ sterling, or such other sum as shall be ascertained, in the course of the proceedings to follow hereon, to be three years' free rent or value of the said entailed lands and estate, as at the date of the said [insert name of granter of bond], and that the provisions payable to the younger children under the foresaid bond of provision in their favour ought to be restricted to the foresaid sum of £ , or such other sum as shall be ascertained as aforesaid; and that in so far as the amount of the said provisions exceeds the said sum of £ , or such other sum as shall be ascertained as aforesaid, the same are null and void and of no force or effect as affecting the petitioner and the succeeding heirs of entail in the said lands and estate, and to order, declare, and restrict accordingly, all in terms of the said statute; and to find that the said provisions are divisible among the said younger children of the said [specify the apportionment craved], or in such other proportions as your Lordships may determine; and to grant warrant to and authorise the petitioner to charge the fee and rents of the said entailed lands and estate of and others (as specified in the schedule appended hereto), other than the mansion-house, offices, and policies thereof, with the foresaid provisions of £ , or such other sum as your Lordships shall fix and determine as the amount of the said provisions, and for that end to make and execute a bond and disposition in security ranking preferably to the said bond of annuity for £ in favour of the said [insert name], or bonds and dispositions in security ranking preferably to the said bond of annuity, and ranking *pari passu* with each other over the said entailed lands and estate and others (other than as aforesaid) for the said sum of £ , or such other sum as shall be fixed or determined to be the amount of the said provisions to younger children, and that in favour of the said [insert names] in the above proportions, or in such other proportions as your Lordships may determine, or in favour of any other party or parties

who may be willing to advance the said sum of £ , or such other sum as shall be fixed and determined to be the amount of the said provisions, or any part thereof, in order to payment thereof to the said [insert names], or any of them, upon the same, or such portions thereof so advanced, being formally discharged by them, or the amount thereof, or the portions thereof so advanced, being consigned for their behoof at the sight of your Lordships, the said bond and disposition in security, or bonds and dispositions in security, binding the petitioner and the heirs of entail succeeding to him in the said entailed lands and estate to repay the principal sum or sums therein, with interest at the rate of £5 per centum per annum from the date or respective dates thereof till repayment, and with the usual penalties, and containing all other clauses usual and necessary in bonds and dispositions in security granted over estates in Scotland held in fee simple, and to pronounce such other order or orders; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

SCHEDULE.

Description of lands.

PROCEDURE.

Intimation, advertisement, and service.

Appointment of curator or tutor *ad litem* to minor respondents, if any, and if necessary.

Remit to man of business.

Decree in terms of report by man of business, and remit to him to see bond executed and recorded.

Decree in terms of report by man of business.

13. Petition to Restrict Jointure Affecting Entailed Estates.

[Presented under 5 Geo. IV. cap. 87, and subsequent Entail Acts and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the entailed lands and estates of and , in the county of and , under and in virtue of the following deeds:—[specify deed or deeds of entail, and destination of same].

[Specify petitioner's succession to the estate and how his title made up.]

That by the Act 5 Geo. IV. cap. 87, intituled "An Act to authorise the proprietors of entailed estates in Scotland to grant provisions to the wives or husbands and children of such proprietors," it was enacted, sec. 1 [take in section].

That the said C. D., now deceased, the petitioner's immediate predecessor in the said entailed lands and estates, by bond of annuity, dated [specify bond of annuity and lands over which the same extend].

That it was by the said bond of annuity specially provided and declared that the said annuity was provided under all the conditions and limitations contained in the said Act 5 Geo. IV. cap. 87.

That the said C. D. died of this date [specify date], survived by his wife, the said E. F., the annuitant.

That the annuity payable to the said E. F. under the said bond is £ per annum, which exceeds the amount of the annuity which the said C. D. was entitled to charge upon the said entailed lands and estates under the said Act, as appears from the detailed statement of the rental of the said lands and estate, as the same happened to be at the date of his death, to be produced in the course of the proceedings to follow hereon. The gross rental, exclusive of the mansion-house, policies, and grass parks adjoining the mansion-house, for the year current at the date of the said C. D.'s death was £ , and the deductions falling to be made therefrom,

conform to detailed schedule thereof, also to be produced in the course of the said proceedings, are as follows, viz.:—[specify deductions, and shew how much is left].

That by sec. 7 of the said Act 5 Geo. IV. cap. 87, it is provided [take in section].

That in terms of the said sec. 7 of the said Act 5 Geo. IV. cap. 87, the petitioner is desirous to have the amount of the said annuity now payable to the said E. F., by him and the heirs of entail next in the order of succession, restricted to the foresaid sum of £ , or to such other sum as may be ascertained in the course of the proceedings to follow hereon, to be not more than one-third of the free yearly rental of the said entailed lands and estates.

That the petitioner is of full age, and not subject to any legal incapacity. That the three next heirs of entail who at the date hereof are entitled to succeed [specify three next heirs, and whether major or in pupillarity or minority].

That the present application is presented in terms of the said Act 5 Geo. IV. cap. 87, and of the other Entail Acts and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, for appointment of a curator *ad litem* to minors, and will then proceed]: and thereafter, on resuming consideration of this petition, and after such inquiry as to your Lordships shall seem necessary, and on being satisfied that the procedure has been regular and proper, and in conformity with the said Acts and relative Acts of Sederunt, to find that the utmost amount with which the said C. D. could competently, under the provisions of the said statute 5 Geo. IV. cap. 87, burden the said entailed lands and estates of , or any part thereof, or the heirs of entail therein, as an annuity to the said E. F., was the sum of £ per annum, or such other sum as your Lordships shall find to be one-third of the free rental of the said entailed lands and estates in the year ending at the term of Whitsunday , being the year current at the death of the said C. D., and that the said annuity of £ should be restricted accordingly to the

said sum of £ , or to such other sum as your Lordships may fix; and that in so far as the amount of the said annuity contained in the said bond of annuity exceeds the said sum of £ , or such other sum as your Lordships may fix, the same is null and void, and of no force or effect as affecting the said entailed lands and estates, or any part thereof, or the petitioner and the heirs of entail succeeding to him therein, and to order, declare, and restrict accordingly, all in terms of the said statute; and to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.
Appointment of curator *ad litem.*
Remit to man of business.
Decree in terms of report of man of business.

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14. PETITION FOR WARRANT TO RESTRICT THE SECURITY FOR YOUNGER CHILDREN'S PROVISIONS TO AN ENTAILED ESTATE.

[Presented under the Entail Acts and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is institute of entail in possession of the entailed estate of , in the county of , which consists of the estates of and under and in virtue of a disposition and deed of entail made and executed by the said [insert description, date, and provisions of deed of entail].

The petitioner is duly infeft in the said entailed estate, conform to the said disposition and deed of entail dated and recorded as aforesaid.

The petitioner is of full age and not subject to any legal incapacity. He was born on the day of .

By the said disposition and deed of entail the whole entailed estate of was burdened with the following sums, being provisions to the younger children of C. D. (first heir of entail), as authorised by the entail statutes [insert details]. The said provisions to the said [insert names and details of deeds, &c., containing provisions]. [Here insert names of three next heirs and whether in minority or major. If in pupillarity or minority a curator *ad litem* may be asked for in the following terms:—It will therefore be necessary that your Lordships appoint a curator *ad litem* to them in the course of the proceedings to follow hereon.]

The petitioner, as set forth in a petition at present before your Lordships, is desirous of disentailing the said entailed estate of . He is also desirous of selling the same. He intends to apply part of the price of the said estate of , if sold, to pay off the foresaid provisions of [insert details].

By the Act 45 & 46 Vict. cap. 53, sec. 10, it is provided that where an entailed estate which is charged with debts or provisions shall be disentailed, it shall be lawful for the heir in possession, in substitution for such charge, and with consent of the creditor or creditors, to charge with such debt or provisions any other estate belonging to him and entailed upon the same series of heirs to the extent to which such other estate might have been lawfully charged with such debt or provisions.

The estates of and are entailed upon the same series of heirs, having been both entailed by the said disposition and deed of entail, and the petitioner is desirous of charging the said provisions of [insert the sums and names of persons], amounting together to £ , which are at present, along with the provisions to be paid off as aforesaid, charged on both the said estates, solely on the estate of [insert name of estate to be charged], and to discharge the said estate of [insert name of estate to be discharged of provisions] of the said two provisions.

When the provisions to be paid off as aforesaid

have been discharged there will be no other charge subsisting on the said estate of other than [insert charges left subsisting].

The rental of the estate of [insert name and rental of estate to be burdened] is £ , from which there will fall to be deducted a sum of [insert public burdens and other preferential charges].

The petitioner will produce, in the course of the proceedings to follow hereon, a schedule of debts and provisions signed and deponed to by him in terms of the Act 38 & 39 Vict. cap. 61, sec. 12, sub-sec. 5.

The procedure in this application is regulated by the Entail Acts, and especially by 45 & 46 Vict. cap. 53, sec. 10, and by the relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and will then proceed]: and [if a curator or curators *ad litem* are necessary] thereafter, if your Lordships think necessary, to appoint a proper person to be curator *ad litem* to the said [insert names of minors]; and on resuming consideration of this application, with or without answers, and after such inquiry into the facts of the case as to your Lordships shall seem necessary, and on being satisfied that the procedure under this petition has been regular and in conformity with the provisions of the said Acts and relative Acts of Sederunt, to interpone authority to the proposed transaction, and to grant warrant to and authorise the petitioner to restrict the security for the [insert number] provisions of [insert amount] to the said [insert names] presently over the two estates of [insert names of estates] to the estate of [insert name of estate bearing whole burdens] alone, and to free and disencumber of the said provisions the estate of [insert name of estate to be disencumbered]; and thereafter to ordain the curator *ad litem* to the said [insert names of minors] to grant a discharge disencumbering the said estate of [insert name] of the said provisions.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.
Appointment of curator *ad litem* if necessary.
Remit to man of business.
Decree in terms of report by man of business.

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15. PETITION BY THE TUTORS OF A PUPIL HEIR OF ENTAIL IN POSSESSION FOR AUTHORITY TO CHARGE CHILDREN'S PROVISIONS, &C.

[In this petition it appeared that there existed a bond of provision in liferent to the widow of last heir of not more than one-third of the free rental, and there were also provisions to children.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B., &c. [*design*], accepting tutors nominated by E. F. by his trust disposition and settlement, dated the day of , and registered in the books of Council and Session the day of , to C. D., of , in the county of , his son, who is at present in pupillarity,

Humbly sheweth—

That C. D. is the heir of entail in possession of the entailed estate of and others, situated in the county of , under and in virtue of a disposition and deed of entail made and executed by the said E. F. to and in favour of himself and the heirs whatsoever of his body (the eldest heir female, when more than one daughter, always succeeding without division), whom failing, as therein mentioned, which deed is dated the day of , and recorded [fill in dates of deeds and recording].

The said C. D. is infeft in the entailed estate, conform to extract decree of special service in his favour, as nearest and lawful heir of tailzie, and provision to his said [state relationship] obtained before the Sheriff of Chancery [fill in details].

The said C. D. was born on and is a pupil of years of age.

By bond and provision, dated the day of , and registered in the books of Council and Session the

day of , the said E. F. , in the exercise of the powers conferred by the Act 5 Geo. IV. cap. 87, provided and disponed to G. H. [fill in name of wife] during all the days of her life after his decease, in case of her surviving him, such a free liferent annuity or jointure as should be equal to but should not exceed one-third part of the free yearly rent of the said entailed lands and estate of and others, in so far as the same should be let, and of the free yearly value thereof in so far as the same should not be let, after making the deductions specified in the said Act, all as the same might happen to be at his death, to be uplifted and taken, the said annuity at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms which should happen after his decease for the half-year following, and so forth half-yearly and termly thereafter in advance during the lifetime of his said wife, with interest and penalty as therein mentioned furth of All and Whole the said lands and estates of and others contained in the said deed of entail, and under the conditions and limitations of the said Act.

The said E. F., by the said bond of provision, further bound and obliged himself and the heirs of entail succeeding to the said lands and estate to content and pay to and among such of his [here insert names of younger children], and of any other child or children to be thereafter born to him of his marriage with the petitioner, the said G. H., as should survive him and should not succeed to the said entailed estate, and to the lawful issue of any of them predeceasing him who might be entitled to claim as in right of such predeceasing child or children, including the lawful issue (other than the heir succeeding to the said estate) of his son, the said C. D., or of any predeceasing child, who if he or she had survived would have been entitled to succeed to said entailed estate, of such sum as should be equal to and should not exceed the amount of the provisions which he was entitled under the statutes before mentioned to grant to his said children, that is to say, for one such child a sum equal to and not exceeding one year's free rent or value of the said entailed estate, to be computed in the manner mentioned in the foresaid Act; for two such children a sum equal to and not exceeding two years' free rent or value; and for three or more such children a sum equal to and not exceeding three years' free rent or value, as the same

should be at the time of his death, and which sum or provision should be payable one year after his decease, with a fifth part more of penalty in case of failure, and the interest of said provision at the rate of five per centum per annum from the time of his decease to the foresaid term of payment, and thereafter during the non-payment thereof, under the declaration that the provisions thereby made in favour of the said younger children were granted by him always with and under all the conditions and provisions, and subject to all the restrictions, limitations, and declarations contained in the said statutes.

The said E. F. died on the , survived by the said C. D., and G. H. his widow, and [design younger children], and was succeeded in the said estate of by the said C. D.

The said [design younger children], who are the three heirs next entitled to succeed to the said entailed estate in their order successively after the said C. D., are all in pupillarity. They are all resident at .

The free yearly rental of the said estate for crop and year , being the year in which the said C. D. died, amounted to £ , as appears from the detailed statement of rental and deductions hereto annexed. According to that statement, the amount with which the said deceased could competently under the said statute burden his heirs of entail succeeding to his said entailed estate (1) by way of annuity to his widow was (under deduction of the interest upon the provision to younger children foresaid) the sum of £ per annum; and (2) by way of provision to younger children (under deduction of the amount of widow's annuity foresaid for three years) the sum of £ , all as shewn in the scheme of division annexed to the statement of rent foresaid.

The petitioners propose to charge the fee and rents of the said estate with the amount of the foresaid provisions by granting a bond and disposition in security, or bonds and dispositions in security, in ordinary form, over the said estate for the said sum of £ , with corresponding interest and penalties, and for these purposes make the present application to your Lordships.

The petitioners will produce, in the course of the proceedings to follow hereon, a schedule of debts and provisions signed and deponed to in terms of the Act 38 & 39 Vict. cap. 61, sec. 12, sub-sec. 3.

The petition is presented in terms and under the powers of the statutes 5 Geo. IV. cap. 87, sec. 4, 11 & 12 Vict. cap. 36, secs. 21, 22, and 23, and 16 & 17 Vict. cap. 94, sec. 7. The procedure is regulated by the Entail Acts, and especially by 38 & 39 Vict. cap. 61, sec. 12, and by the relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service on seven and fourteen days of induciæ, and, if necessary, for the appointment of a curator *ad litem* to minor respondents, and will then proceed]: and on resuming consideration of this petition, with or without answers, and after such inquiry into the facts of the case as to your Lordships shall seem necessary, and on being satisfied that the procedure under this petition has been regular and in conformity with the provisions of the said Acts and relative Acts of Sederunt, to grant warrant to, and authorise the petitioners to execute a bond and disposition in security, in ordinary form, over the said lands and estate otherwise than the mansion-house, offices, and policies, in favour of the said [design younger children] equally between them, or of any party or parties advancing the amount of the provisions above mentioned, binding the said and the heirs of entail, in their order successively, to repay the foresaid principal sum of £ , with corresponding interest and penalties as aforesaid; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

[Take in rentals.]

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ remit to man of business, and appointment of tutors *ad litem* if necessary.

Decree in terms of report by man of business, and remit to him to revise draft bond and see same executed and recorded.

Decree in terms of second report by man of business.

16. Petition for Authority to Charge Entailed Estates with Younger Children's Provision.

[Presented under 5 Geo. IV. cap. 87, 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt. In this case there was a bond of provision by the former heir of entail, and also nomination of the petitioner as *curator* and *tutor nominate* to his three remaining children.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the entailed estates, lands, and barony of and others in the county of , under and in virtue of a deed of entail made and executed by the deceased C. D., some time of , great-grandfather of the petitioner, dated and recorded in the Register of Tailzies , and in the books of Council and Session , both in the year , in favour of himself in liferent during all the days of his life, and of the also now deceased E. F., some time of , grandfather of the petitioner, eldest son procreated of the marriage between the said C. D. and Mrs. , his wife, and the heirs male of the body of the said E. F. in fee, whom failing, of the other heirs therein mentioned; and also under and in virtue of a deed of entail, made and executed by the said E. F., grandfather of the petitioner, dated and recorded in the Register of Tailzies , in favour of himself and the heirs male of his body, whom failing, of the other heirs therein mentioned. The destinations under these two entails are identical, as well as the conditions, provisions, restrictions, limitations, exceptions, declarations, and clauses, irritant and resolutive.

The said entailed estates and others were possessed under the said entails by the petitioner's father, the deceased G. H., who was a son of the said E. F., as heir of entail under the said destinations, and the petitioner has completed title to the said estates and others as heir of entail succeeding to him,

conform to extract decree of special service in his favour as eldest surviving son and nearest and lawful heir of tailzie and provision in special of the said G. H., his father, expede before the Sheriff of , dated , and recorded in Chancery and extracted , and also recorded in the Division of the General Register of Sasines applicable to the county of , all days of .

That by the Act 11 & 12 Vict. cap. 36, intituled "An Act for the Amendment of the Law of Entail in Scotland," it is provided, sec. 21 [take in section].

By the Act 16 & 17 Vict. cap. 94, intituled "An Act to extend the benefits of the Act of the 11th & 12th years of Her present Majesty, for the amendment of the Law of Entail in Scotland," it is enacted, sec. 7 [take in section].

That, by bond of provision, dated and registered in the books of Council and Session , the said deceased G. H. (petitioner's father), on the narrative that his rights and infeftments as heir of entail infeft and in possession of the said entailed estates and others conferred inadequate powers on the heir in possession for the time of granting provisions to his children not succeeding to the said estate, and that he was desirous, by virtue of the powers conferred upon heirs of entail by the said Act 5 Geo. IV. cap. 87, intituled "An Act to authorise the proprietors of entailed estates in Scotland to grant provisions to the wives or husbands and children of such proprietors," and by the "Entail Amendment (Scotland) Act, 1875," and, in conformity therewith, of granting provisions to his children or their issue not succeeding to the said entailed estates, thereby, in virtue of the foresaid powers, and in conformity therewith, bound and obliged the heirs of entail succeeding to him in the foresaid tailzied lands and estate of to content and pay to and among his said children, other than the heir of entail succeeding to him in the said entailed lands and estate of as should be alive at the time of his death, and to the issue of such of them as should predecease him, the respective provisions after mentioned, and interest at the rate of £5 per centum per annum of the said provisions from the time of his death, during the not payment thereof, viz.:—If there should be only one such child, or the issue of one such child, a sum equal to one year's free rent or value of the said entailed

lands and estate of ; if two such children or their issue, a sum equal to two years' free rent or value of said entailed lands and estate, and if three or more such children or their said issue a sum equal to three years' free rent or value of said entailed lands and estate: Providing and declaring always that, if there should be three or more children, or their issue, the amount of provisions which they should together be entitled to receive in virtue thereof should not exceed in whole a sum equal to three years' free rent of said entailed lands and estate, after deduction as specified in said Acts, to which the claim of his said children and their issue was thereby restricted; but with and under the faculty to him, if there should be two or more children, or issue of children, by any writing under his hand to divide and apportion the foresaid provision among such children, and the issue of deceasing children, in such proportions and in such manner as he should think fit, and failing such division and apportionment, the said provision should be equally divided among the said children and the lawful issue of any child or children predeceasing him, such issue being entitled to the share or shares of the foresaid provision which their deceased parent or parents would have been entitled to, if alive, but the heir of entail succeeding to the said lands and estate was thereby expressly excluded from all share of said provision, which was thereby declared to be conceived in favour of the children only who should not succeed as heir of entail, and the issue of such children as might have deceased.

That the said G. H., the granter of the said bond of provision, died on or about , and was succeeded in the said entailed estates by his eldest surviving son, the said A. B., the petitioner.

That besides his said son, who is the heir of entail now in possession of the said entailed estates, the said deceased G. H. left three children, viz.:—[here specify].

The said two heirs are both of full age, but the said [third heir] is in pupillarity, having been born on . The said A. B. is his *tutor* and *curator nominate*, conform to testament and nomination of tutors and curators, executed by the said G. H. [last heir], dated , and registered in the books of Council and Session . The said deceased G. H. did not execute any appointment of said provision among his three younger children, and the

amount thereof falls to be divided equally between and among them.

That the free yearly rental of the said entailed estates for the year current at the death of the said G. H., after making the deductions allowed by statute, was £ sterling, and three years thereof amount to the sum of £ sterling. In terms of the said bond of provision each of the said [take in names of next three heirs], being the whole younger children of the said deceased G. H., is therefore entitled to the sum of £ sterling.

That the petitioner proposes to charge the fee and rents of the whole entailed estates, lands, and barony of , other than the mansion-house, offices, and policies thereof, with the amount of the foresaid provision, by granting bond and disposition in security, or bonds and dispositions in security, in ordinary form, over the said entailed estates, excepting as aforesaid, for the three several sums of £ due, as above mentioned, to the said younger children respectively, amounting together to the said *cumulo* sum of £ , with the due and legal interest thereof from the date of said bond and disposition in security, or bonds and dispositions in security, being granted to such younger children themselves, or any of them, or to the petitioner himself as an individual, or to any other party or parties advancing the amount of the said provision, or any part thereof, in order to the payment of such younger child or children.

That the petitioner is of full age, having been born on , and is not subject to any legal incapacity. The three nearest heirs who, at the date of presenting this application, are for the time entitled to succeed to the said entailed estates in their order successively, immediately after the petitioner, are [insert names of three heirs]. The said [state which heirs are in minority, if any]. They have no guardians other than their father, the petitioner, who is their administrator-in-law.

That the petitioner will produce, in the course of the proceedings to follow hereon, a schedule in terms of the 12th section of the Act 38 & 39 Vict. cap. 61, intituled "The Entail Amendment (Scotland) Act, 1875," sub-sec. 5, setting forth that there are no entailer's or other debts, and no provisions to husbands, widows, or children affecting, or that may be made to affect, the fee of the said entailed estates of

the heirs of entail that are not secured by having been placed on the record, or, if there are any such debts or provisions that are not so secured, setting forth such debts or provisions—the amounts or sums thereof in figures, the dates when the same were constituted, and the names and designations or residences of the parties who at the date of this application are in right of the same.

That the petitioner makes the present application to your Lordships under and in terms of the following statutes, viz.: —5 Geo. IV. cap. 87, 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven and fourteen days, and, if necessary, for appointment of a curator *ad litem* to minor heirs, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, and after such inquiry into the facts as to your Lordships shall seem proper, to find that the procedure under this application has been regular and proper, and in conformity with the provisions of the statutes and relative Acts of Sederunt, to interpone authority to the proposed transaction, and to grant warrant to and authorise the petitioner to make and execute in favour of each of the said [here take in names of younger children], or any of them, a bond and disposition in security, or bonds and dispositions in security, for the said sum of £ sterling, with interest and corresponding penalties in ordinary form over the said entailed estates, lands, and barony of , other than the mansion-house, offices, and policies thereof, binding the petitioner and his heirs of entail, in their order successively, to repay the foresaid principal sum or sums therein, with interest and penalties as aforesaid, and containing all clauses usual in bonds and dispositions in security over estates in Scotland held in fee simple; but always with and under the provisions and declarations applicable to such bonds and dispositions in security contained in the said Acts or other Acts relative thereto; or otherwise to make and execute such bond and disposition in security, or bonds and

dispositions in security, for the above sums, principal, interest, and penalties, or any part or portions thereof, in favour of the petitioner, the said A. B., as an individual, and his heirs or assignees whomsoever, or of any other party or parties advancing the said several sums, or such parts or portions thereof, in order to payment of their respective shares of said provision to the said [here insert the three next heirs], or any of them, the share or shares of said provision, or any portion or portions thereof, so advanced and paid to them respectively, or to any of them, being formally discharged by the said or the said A. B., the petitioner, as *tutor nominate* as aforesaid to the said [the pupil before mentioned] on the amount thereof, with any interest due thereon, being paid over to or consigned or invested for their behoof respectively, and to decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

Schedule of the entailed estates, lands, and barony of and others, over which it is proposed to grant the bond and disposition in security, or bonds and dispositions in security, referred to in the foregoing petition.

[Take in description of lands.]

PROCEDURE.

Intimation, advertisement, and service.

On expiry of inducie, remit to man of business.

Decree in terms of report by man of business, and remit to him to revise draft bond and see same executed and recorded.

Decree in terms of second report by man of business.

17. Petition for Authority to Charge with Debt.

[Presented under 11 & 12 Vict. cap. 36, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the various entailed lands and estates lying in the counties of , all commonly known as the [insert distinctive name] estates, by virtue of a disposition and deed of entail granted by C. D. in favour of himself and the heirs male of his body and the other heirs therein mentioned, dated the day of , and recorded in the Register of Tailzies the day of , and is duly infeft therein, conform to [state title].

That by the Act 11 & 12 Vict. cap. 36, intituled "An Act for the Amendment of the Law of Entail in Scotland," it is enacted by sec. 4 [take in section].

That by the Act 45 & 46 Vict. cap. 53, intituled "The Entail (Scotland) Act, 1882," it is enacted by sec. 4 [take in section].

That the petitioner is desirous to charge the fee and rents of those portions of the said entailed lands and estates, which are hereinafter particularly described, with the sum of £ , and that by way of bond and disposition in security, or bonds and dispositions in security, in ordinary form, and he makes the present application to your Lordships in terms of the Entail Acts and relative Acts of Sederunt, and more particularly of the said Acts 11 & 12 Vict. cap. 36, and 45 & 46 Vict. cap. 53.

That the portions of the said entailed lands and estates which the petitioner so proposes to charge consist of All and Whole [here specify lands proposed to be burdened].

[Here state where portions of lands are situated, and in particular that they are not connected with mansion-house, offices, and policies.]

That by the Act 38 & 39 Vict. cap. 61, intituled

"The Entail Amendment (Scotland) Act, 1875," it is enacted by sec. 4 that [take in section].

That the petitioner was born on the day of and is now years of age.

That the only heir of entail whose consent is required to the present application is E. F. [design], the only son of the petitioner, and the heir next in succession, being heir-apparent to the petitioner under the said disposition and deed of entail, and with whose consent the petitioner would be enabled to disentail said entailed lands and estates.

That the said E. F. was born on the day of and is therefore upwards of twenty-one years of age. He resides at , in the county of .

That the petitioner has obtained the consent of the said E. F. to the present application, and a deed of consent by him will be produced in the proceedings to follow hereon.

That there are no debts or provisions affecting, or that may be made to affect, the said entailed lands and estates, or the heirs of entail succeeding thereto, which are not secured by having been placed on record, as will be instructed by the affidavit made and deponed to by the petitioner, to be produced in the course of the proceedings to follow hereon.

[The prayer will be for intimation, advertisement, and service for seven days if within Scotland, and fourteen days if furth thereof, and will thereafter proceed]: and on resuming consideration hereof, with or without answers, and after such inquiry as to your Lordships may seem necessary, and on being satisfied that the proceedings under the petition are regular and proper, and in conformity with the provisions of the said Acts and relative Acts of Sederunt, to grant warrant to and authorise the petitioner to make and execute in favour of any person or persons willing to advance the amount over the foresaid portions of the said entailed lands and estates, a bond and disposition in security, or bonds and dispositions in security in ordinary form, containing all the usual clauses in bonds and dispositions in security granted over fee simple property, binding the petitioner and the heirs of entail in their order successively to repay the foresaid principal sum of £ , with interest and penalties,

all in terms of the said Act 11 & 12 Vict. cap. 36, and the various Entail Acts and Acts of Sederunt enabling the petitioner herein; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

Remit to man of business.

Decree in terms of report by man of business, and remit to him to revise draft bond and see it executed and recorded.

Decree in terms of second report by man of business.

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18. PETITION BY THE PROPRIETOR OF AN ENTAILED ESTATE FOR AUTHORITY TO CHARGE WITH DEBT.

In this case the petition also prayed, in addition, for authority to charge the estate with the value of the next heir's interest or expectancy in the charges to be imposed under the petition, including such additional sum which will be charged as compensation for expectancy or interest of the said next heir.

[Presented under 11 & 12 Vict. cap. 36, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B., of [*design*],

Humbly sheweth—

That the petitioner is heir of entail in possession of [here specify entailed lands and deed or deeds under which same are held, also destination of the deed or deeds of entail].

That under and by virtue of an Act, intituled "An Act for the Amendment of the Law of Entail in Scotland," sec. 2, the petitioner is entitled to disentail the said lands

and estates, with the consent of his eldest son and heir-apparent, C. D. after mentioned, and that, by sec. 4 of the said Act, it is provided that an heir of entail in possession may charge his estate with debt with such and the like consents as would be necessary to a disentail of the same.

By the Entail Amendment Act, 1875, and the Entail (Scotland) Act, 1882, it is provided that, where in any application under the Entail Acts an heir or his curator *ad litem* whose consent is required shall refuse or fail to give such consent, the Court may assess the value of such heir's expectancy or interest, and dispense with such consent on payment of such value, or on proper security over the estate being found therefor.

The petitioner is of full age, and not subject to any legal incapacity, and the three nearest heirs of entail entitled immediately after the petitioner, at the date of the present application, to succeed to the said entailed lands and estates in their order successively are :—[here specify three heirs of entail, and whether major or in pupillarity or minority].

That the petitioner is desirous of borrowing a sum of money not exceeding £ [insert sum] on the security of the said entailed lands and estates of [specify], by granting over the same, or parts thereof, a bond and disposition in security, or bonds and dispositions in security, in favour of the party or parties advancing the same, and for that purpose makes the present application to your Lordships.

The said C. D. is the only heir whose consent is necessary to the present application, and the petitioner is prepared to secure the value of the expectancy or interest of the said C. D. in the event of the curator *ad litem* to be appointed to him by your Lordships refusing or failing to consent thereto.

The petitioner also desires to charge the said lands and estates, in addition to the above sum, with such sum as shall represent the expectancy or interest of the said C. D. in respect of the whole charge or charges to be imposed on the said estates in virtue of the powers craved by this petition, including the said additional sum to be charged as compensation for the said expectancy or interest.

The petitioner will produce, in the course of the procedure to follow hereon, a schedule of debts and provisions, signed and deponed to by him in terms of the Entail Amendment Act, 1875, sec. 12, sub-sec. 5.

That the procedure in this application is regulated by the Entail Acts and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service, and will then proceed]: and thereafter [if necessary, here pray for the appointment of a curator *ad litem*]; and on resuming consideration of this application, with or without answers, and after such inquiry into the facts of the case as to your Lordships shall seem necessary, and on being satisfied that the procedure under this petition has been regular and proper, and in conformity with the provisions of the statutes and relative Acts of Sederunt, to grant warrant to and authorise the petitioner to charge the fee of the said entailed lands and estates, or part thereof, with (*first*) a sum not exceeding £ [insert], and (*second*) such a sum as may be found in the course of the proceedings herein to represent the interest or expectancy of the said C. D. in the whole sums so to be charged on the fee of the said lands and estates, and for these ends to make and execute at the sight of the Court (*first*) a bond and disposition in security, or bonds and dispositions in security, in ordinary form, including power of sale, to the extent of, but not exceeding, the amount in all of £ [insert], in favour of the party or parties advancing the same to the petitioner; and (*second*) a bond and disposition in security, also in ordinary form, including a power of sale, the said bonds and dispositions in security to rank *pari passu* in favour of the said C. D. for such sum as may be found to be his interest or expectancy in the said lands and estates in respect of the said sums to be charged; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, appointment of curator *ad litem* (if necessary) and remit to man of business and actuary.

Decree in terms of reports, and remit to man of business to see draft bonds executed and recorded.

Decree in terms of second report by man of business.

19. Petition by a *Curator Bonis* to an Heir of Entail for Authority to Charge with Debt and to Sell Entailed Estates.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*], *curator bonis* to C. D. [*design*],

Humbly sheweth—

That the said C. D. is heir of entail in possession of the entailed lands and estate of , in the county of , under and in virtue of a deed of entail made and executed by him to himself and the heirs male of his body, whom failing [give destination], which deed of entail is dated the day of , and registered in the Register of Entails on the day of , and with warrant of registration thereon on behalf of the said C. D. in the Division of the General Register of Sasines applicable to the county of , for publication as well as for preservation, the day of . The said C. D. is thus duly infeft in the said entailed lands and estate.

That upon the petition of [give names and designations of petitioners], your Lordships were of this date [insert date in margin] pleased to nominate the petitioner to be *curator bonis* to the said C. D., who was and still is unable, from the state of his health, to manage his own affairs or give directions for their management, and who is at present residing at . The said C. D. is of full age, having been born on the day of .

In the management of the estate of the said C. D. the petitioner has recently found it necessary to make application to your Lordships for certain special powers. In compliance with the Pupils Protection Act, he, of this date [insert date in margin], lodged with the Accountant of Court a report setting forth the circumstances, and requesting his opinion as to whether, *inter alia*, powers should be granted to the petitioner—(1) to borrow on the security of the entailed estate of a sum of £ to meet the prices of sheep stocks and other pressing claims against the ward's estate, and the necessary compensation to the next heirs; and

(2) to apply to the Court for an order of sale, under the Entail (Scotland) Act, 1882, of the entailed estate. By opinion dated , the Accountant recommended that the above powers should be granted. The petitioner thereupon presented a note to your Lordships, and by interlocutor of this date [insert date in margin] the Junior Lord Ordinary granted warrant to, authorised, and empowered the petitioner to make application to the Court under and in terms of the Entail Acts and relative Acts of Sederunt—(1) for authority to charge the fee of the said entailed lands and estates, or any part or parts thereof, with a debt or incumbrance of £ ; and (2) to apply to the Court for an order of sale under the Entail (Scotland) Act, 1882, of the said entailed lands and estate, the price after payment of debt to remain subject to the fetters of the entail.

A print of the said note, having engrossed thereon a certified copy of the said interlocutor, is herewith produced and referred to. The said report and opinion are printed in the Appendix to the note, and the petitioner submits that the circumstances there set forth are sufficient to show that the granting of the application to borrow, and the ordering of the subsequent sale of the estate, will be for the benefit of the said C. D., the heir in possession, as required by the Entail (Scotland) Act, 1882, secs. 11 and 21.

The three next heirs entitled to succeed to the said entailed lands and estate in their order successively after the said C. D. are (1) [design], 2 [design], and 3 [design]. They are all of full age, and not subject to any legal incapacity. Under the said deed of entail the said [first heir] is entitled, should he succeed to the said entailed lands and estate, to acquire the same in fee simple without any consents. The said next heirs have not consented to this application, in so far as it concerns the charging of debt on the entailed estate, and the petitioner is prepared to pay or secure the value of their expectancies or interests as the same may be determined by your Lordships in the course of the proceedings. Their consents to the sale of the entailed estate are not required under the statutes.

The heir-at-law and next-of-kin of the said C. D. are his brother and sisters hereinbefore named and designed [three next heirs]. The cautioner for the petitioner is [design].

The petitioner herewith produces a schedule of debts signed and deponed to by him, in terms of the Entail Amend-

ment (Scotland) Act, 1875, sec. 12, sub-sec. 5, and of the Entail (Scotland) Act, 1882, sec. 20. As appears from the said schedule, the creditors to whom intimation of this petition falls to be made are [design].

That this application is made to your Lordships under and in terms of the Entail Acts and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service on an inducia of seven or fourteen days, and will then proceed]: and thereafter, on resuming consideration of this application, with or without answers, and after such inquiry into the facts of the case as to your Lordships shall seem necessary, and on being satisfied that the procedure under this petition has been regular and in conformity with the provisions of the Acts and relative Acts of Sederunt—in the first place, to grant warrant to, authorise, and empower the petitioner to charge the fee of the said entailed lands and estate, or any part or parts thereof, with a sum not exceeding £ sterling, and for that end to make and execute, at the sight of the Court, a bond and disposition in security, or bonds and dispositions in security, in favour of the party or parties advancing the money to the petitioner, binding the said C. D. and the heirs of entail succeeding to him in the said entailed lands and estates, and, *subsidiarie*, the heirs, executors, and representatives whomsoever of the said C. D., in repayment of the said sum of £ , with interest and liquidate penalties, and containing a power of sale in ordinary form, and all other clauses usual and necessary in bonds and dispositions in security granted over lands in Scotland held in fee simple; and in the second place, to grant an order of sale of the said entailed lands and estate, and to grant warrant to, authorise, and empower the petitioner to sell the same; to prescribe the manner of sale thereof, and on the same being sold, to authorise and empower the petitioner to make and execute, at the sight of your Lordships, such deed or deeds of conveyance in favour of the purchaser or purchasers as shall be requisite to give effect to the said sale, and to authorise the petitioner to apply the price for one or

other of the purposes specified in the 23rd section of the Entail (Scotland) Act, 1882; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.
On expiry of induciæ, remit to man of business and actuary.
Decree in terms of reports.

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20. PETITION FOR AN ORDER OF SALE OF AN ENTAILED ESTATE FOR THE PURPOSE OF INVESTMENT OF REALISED PRICE IN NAMES OF TRUSTEES.

[Presented under 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner is heir of entail in possession of the entailed lands and estate of and others, lying in the counties of and , under and by virtue of [here describe title].

That the petitioner is infeft in the said entailed lands and estate, conform to extract decree of special and general service by the Sheriff of Chancery in his favour as eldest son and heir male of the body of C. D., and nearest and lawful heir of tailzie and provision in special and general of the said C. D., dated the , and recorded in Chancery and extracted the , both days of , and also recorded in the Division of the General Register of Sasines

applicable to the counties of and , the day of , all in the year .

That the said entailed lands and estate of and others were purchased in the year by the trustees, acting at the time under the said trust disposition and settlement and codicils of E. F., at the price of £ , out of a sum of £ which the said E. F. had, by his said trust disposition and settlement and codicils, directed his trustees to apply in the purchase of lands to be entailed under a deed or deeds of strict entail, in favour of the said C. D. and the heirs male of his body, whom failing, certain other heirs and substitutes, and were entailed by the trustees acting at the time under the said trust disposition and settlement and codicils of the said E. F., under the disposition and deed of entail before mentioned. The trustees at present acting under the trust disposition and settlement and codicils of the said E. F. are the petitioner and [fill in names of trustees], and the balance of the said sum of £ , which is represented by the sum of £ [here specify stock in which money is invested temporarily], is still held by them for the purpose of purchasing land to be entailed, in terms of the said trust disposition and settlement and codicils of the said E. F.

That by the Entail (Scotland) Act, 1882, 45 & 46 Vict. cap. 53, it is enacted as follows:—[take in secs. 19 to 25].

That the petitioner believes that it would be for the interest of himself and the heirs of entail to sell the said entailed lands and estate of and others, and he is desirous of availing himself of the provisions of the said Entail (Scotland) Act, 1882, authorising the sale of an entailed estate, and of obtaining authority to sell the said entailed lands and estate, and an order authorising the investment of the balance remaining of the price, after deducting costs, charges, and expenses, in the names of trustees to be appointed by your Lordships, in trust for himself and the heirs of entail in the said entailed lands and estate in their order. The petitioner respectfully suggests to your Lordships the names of [trustees' names to be inserted], in whose names the said balance of the said sum of £ which the said E. F. directed to be applied in the purchase of land to be entailed, and which is represented by the said sum of £ , is at present held,

and as fit and proper persons to be appointed trustees.

That the petitioner is of full age, and not subject to any legal incapacity.

That the three nearest heirs of entail who are for the time entitled to succeed to the said entailed lands and estate immediately after the petitioner in their order successively, and whose consents would have been required to an application for disentail of the same are—G. H., I. J., K. L. [give designations]. The said G. H., I. J., and K. L. are all in pupillarity. Their tutors are [specify tutors, or, if none, state that tutor *ad litem* will have to be appointed to them].

That the petitioner herewith produces a schedule of debts, signed and deponed to by him, in terms of the 5th sub-section of the 12th section of "The Entail Amendment (Scotland) Act, 1875," 38 & 39 Vict. cap. 61, and the said "Entail (Scotland) Act, 1882." As appears from the said schedule, the creditors, to whom intimation of this petition falls to be made in terms of the said last-mentioned Act, are [specify creditors].

That the petitioner makes the present application to your Lordships under and in terms of the Entail Acts and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, for the appointment of a curator *ad litem*, and will then proceed]: and on resuming consideration of this petition, and after such inquiry and report as to your Lordships shall seem proper, to find that the procedure has been regular and proper, and in conformity with the provisions of the statutes and relative Acts of Sederunt; and to interpone your Lordships' authority; and to grant an order for sale of the said entailed lands and estate of and others, to fix the time and place and manner of sale thereof, and to authorise the sale of the same in whole or in lots by public auction, at such upset price or upset prices as your Lordships may direct, or by private bargain, at such price or prices as your Lordships may fix; and upon the said entailed lands and estate being sold, to authorise the petitioner to execute and

grant a disposition or dispositions in favour of the purchaser or purchasers, containing all clauses usual and necessary for the purposes of the conveyance, according to the nature of the transaction, and in particular the clause of warrandice specified in the said "Entail (Scotland) Act, 1882," and to direct and authorise payment of all costs, charges, and expenses incurred in this application and other applications or procedure following thereon, so far as properly affecting the capital of the estate, to be paid out of the price thereof; and further, to authorise and direct that the balance of the price be invested as entailed money in the names of the [specify names of trustees] as trustees, in trust for the petitioner and the heirs of entail in the said entailed lands and estate, in their order; or to do further or otherwise as to your Lordships shall seem proper.

According to Justice, &c.

SCHEDULE.

[Description of lands.]

PROCEDURE.

Intimation, advertisement, and service.

Appointment of curator *ad litem*, if necessary.

Remit to man of business to inquire and report.

Decree in terms of report by man of business, and remit to him to adjust and revise deeds, and to see same executed and recorded, and money invested in names of trustees.

Second report by a man of business.

Note.—The sale shall not be by *private* bargain if either the applicant or the next heir shall intimate within one month after the order of sale that he desires the sale to be by *public* auction (sec. 22 of Act of 1882).

21. Petition for Approval of Agreement to Sell Part of an Entailed Estate by Private Bargain, and for Authority to Sell and to Apply the Proceeds.

[Presented under 11 & 12 Vict. cap. 36, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is institute of entail in possession of the entailed lands and estate of , lying in the county of , and infeft therein under and by virtue of [specify entail and title].

That by the Act 11 & 12 Vict. cap. 36, intituled "An Act for the Amendment of the Law of Entail in Scotland," it is enacted, sec. 25, that [take in section].

That by the said statute it is further enacted, sec. 26 [take in section].

That by the Act 31 & 32 Vict. cap. 84, intituled "An Act to Amend in several particulars the Law of Entail in Scotland," it is enacted, sec. 9 [take in section].

That the petitioner has agreed to sell by private bargain to [here specify the purchasers and the minute of agreement to sell], being part of the said entailed estate of , described in the schedule hereto annexed.

That by the said minute of agreement it is stipulated, *inter alia*, that the price of the said subjects above referred to should be £ , which it is declared should be payable by the said purchasers to the petitioner at the date of their entry to the said subjects [here take in any other particulars of agreement], and that the said purchasers should pay the whole of the expenses incurred or to be incurred by the petitioner of and incident to the said minute of agreement, the said disposition, and this petition.

That the said sum of £ is a full price for the said subjects, and that the sale of the said subjects, if carried through, would be advantageous and beneficial for the institute or heir of entail in possession of said estate, and not detrimental to the interest of the succeeding heirs of entail.

[Here take in, if necessary, a narrative of any power to burden reserved by the entail, and state how far it has been exercised, or whether it remains intact.]

That in the event of your Lordships approving of the said minute of agreement, the petitioner proposes, with the approbation of your Lordships, to apply the said sum of £ to the extent of £ [specify the purposes to which the money is to be applied], all in terms of the foresaid 9th section of the Act 31 & 32 Vict. cap. 84.

That the petitioner is of full age, and subject to no legal incapacity. He was born on . That the three nearest heirs of entail for the time entitled to succeed to the said entailed estate immediately after the petitioner, in their order successively, are [here state next heirs in order, and if major or in pupillarity or minority].

That the petitioner will duly make and produce a schedule in terms of the 12th section of the Act 38 & 39 Vict. cap. 61, sub-sec. 5, setting forth the entailer's debts or other debts and provisions to husbands, widows, or children, if any, affecting, or that may be made to affect, the fee of the said entailed estate, or the heirs of entail which are not secured by having been placed on record.

That the petitioner is desirous to obtain your Lordships' approval of the said minute of agreement, and of the sale of the said subjects described in the schedule hereto annexed, for the sum of £ , by private bargain, in terms of the said minute of agreement, and to obtain your Lordships' authority to sell the said subjects accordingly, and to apply the proceeds of the sale in manner above set forth, and for this purpose he makes the present application to your Lordships under and in terms of the Acts 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, for appointment of a curator or curators *ad litem*, and will then proceed]: and thereafter, upon resuming consideration hereof, with or without answers, and after such inquiry as to your Lordships shall seem necessary, to find the procedure to have

been regular and proper, and in conformity with the statutes and relative Acts of Sederunt, and on being satisfied that the proposed sale is advantageous and beneficial for the petitioner, and not detrimental to the interests of the succeeding heirs of entail, to approve of the foresaid minute of agreement to sell the foresaid part of the lands and estate of by private bargain, and to authorise the sale thereof accordingly; to grant authority to the petitioner to apply the said sum of £ [here specify purpose to which money is to be applied], to grant authority to the petitioner to execute and deliver to and in favour of the purchasers, the said , a valid disposition, in fee simple in ordinary form, of the said subjects described in the schedule hereto, as stipulated by the said minute of agreement, containing all usual clauses and all clauses necessary for giving effect to the conditions stipulated and agreed to in the said minute of agreement; and thereafter to approve of the whole procedure, and decern; or to do further or otherwise as to your Lordships may seem proper.

According to Justice, &c.

SCHEDULE.

[Description of lands.]

PROCEDURE.

Intimation, advertisement, and service.

Appointment of curator *ad litem* (if necessary).

Remit to man of business and man of skill to inspect portion of entailed estate proposed to be sold, and report whether the proposed sale is advantageous and beneficial for the petitioner, and not detrimental to the interests of the succeeding heirs of entail.

Decree in terms of report.

Disposition in favour of purchasers to be lodged in process and approved of by Court.

After decree is pronounced, deed of acknowledgment by petitioner is lodged in process, and on a second report by man of business, an interlocutor pronounced approving of same.

22. Petition for Authority to sell Part of Entailed Estate.

[Presented under the Entail Acts, and specially 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53. This is a petition by an entailer who had constituted the entail in favour of himself and certain heirs therein named, and lands have been agreed to be sold under a minute of agreement to a company holding feus on the estate at twenty-five years' purchase.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is institute of entail in possession of and infeft in the entailed lands and estate of , in the county of , under and in virtue of a disposition and deed of entail made and executed by the petitioner in favour of himself, whom failing [specify destination and date].

By the Entail (Scotland) Act, 1882, 45 & 46 Vict. cap. 53, an heir of entail in possession of any entailed estate is entitled to apply to the Court for an order of sale of the estate or any part thereof. Secs. 19, 20, 21, and 22 of the said Act are in the following terms, viz.:— [take in sections; also take in sub-sec. 9 of sec. 23 of said Act].

The petitioner has granted a large number of feus on the said estate of , and a considerable extent of ground feued is now held by C. D. & Company, whose extensive works are situated on the said estate. The said C. D. & Company are infeft in the following areas of ground, for which they pay the annual feu-duties undernoted, viz.:— [specify feus, area taken up, and total feu-duty of each].

They have also agreed to feu additional ground, to which a feudal title has not yet been granted, viz.:—[specify ground to be feued and total feu-duty].

In all of said feus the minerals are reserved to the petitioner and his successors in the entailed estate of , with power to work the same without being liable in surface damages, excepting as regards the minerals under a certain area of the works of the said C. D. &

Company, where the minerals are to be left unworked for the support of the works, as provided in the feu charter thereof.

The said C. D. & Company are desirous of acquiring the superiority of their feus, and have offered to purchase the same, and the petitioner is desirous of accepting their offer. A provisional minute of agreement of sale has therefore been entered into between the petitioner on the one part, and the said C. D. & Company on the other part, dated

By the said minute of agreement of sale the petitioner, subject to the authority of your Lordships being granted, as after mentioned, agreed to sell, and the said C. D. & Company agreed to purchase, the superiority of the said feus in which they are infeft as aforesaid, and also the said areas of ground agreed to be feued as aforesaid, but to which no feudal title has been granted. The total feu-duty of said subjects, as above mentioned, is £ , and the price agreed upon is twenty-five years' purchase thereof, viz., £ . The minerals in said feus are excepted from the sale and reserved to the petitioner and his successors in said estate, with power to work the same, except as aforesaid. The petitioner has also agreed to apply to your Lordships under the Entail Acts, and, in particular, sec. 19 and following sections of the said Entail (Scotland) Act, 1882, for authority to sell the said subjects to the said C. D. & Company. With regard to expenses, the agreement provides, *inter alia*, that "the parties will pay the expenses of this agreement, and of the petition to the Court and whole proceedings therein, and of the conveyance of the subjects, equally."

The said minute of agreement of sale, containing sundry other clauses, is printed as an Appendix hereto, and is referred to for its terms.

The petitioner therefore makes the present application to your Lordships for authority to sell the said subjects to the said C. D. & Company, in terms of the said minute of agreement of sale, and to grant at the sight of your Lordships a valid deed or deeds of conveyance thereof, and to apply the said price for one or other of the purposes specified in the 23rd section of the said Entail (Scotland) Act, 1882.

The petitioner believes the proposed sale to be in the interest of the estate and of the heirs of entail entitled to succeed thereto.

The petitioner is of full age, and not subject to any legal incapacity. He was born on the day of .

The three heirs next entitled to succeed to the said entailed estate in their order successively after the petitioner, and whose consents would be required to a disentail, are [specify next three heirs, and if major or in minority].

The petitioner will produce, in the course of the proceedings to follow hereon, a schedule of debts and provisions in terms of the Act 38 & 39 Vict. cap. 61, sec. 12, sub-sec. 5, and of the said Act 45 & 46 Vict. cap. 53, sec. 20.

The burdens on the said estate are [specify any burdens that may exist on the property].

The procedure in this application is regulated by the Entail Acts, and especially by the Acts 38 & 39 Vict. cap. 61, sec. 12, and 45 & 46 Vict. cap. 53, sec. 20, and following sections, and by the relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, for the appointment of a curator *ad litem* to minor heirs, and will then proceed]: and on resuming consideration of this petition, with or without answers, and after such inquiry into the facts of the case as to your Lordships shall seem necessary, to find that the procedure has been regular and proper, and in conformity with the provisions of the statutes and relative Acts of Sederunt, and to grant warrant to and authorise the petitioner to sell the said subjects described in the said minute of agreement of sale, forming part of the said entailed lands and estate of , to the said C. D. & Company by private bargain, at the price and on the terms and conditions specified in the said minute of agreement of sale; and to make and execute, at the sight of your Lordships, such deed or deeds of conveyance in favour of the said C. D. & Company as shall be requisite to give effect to the said sale; and to authorise the petitioner to apply the price of the said subjects for one or other of the purposes specified in the 23rd section of the said Act 45 & 46 Vict. cap. 53; and to ordain the costs, charges, and

expenses of this application and other applications or procedure following hereon, in so far as payable by the petitioner, to be paid out of the said price or income thereof; all in terms of the said Act 45 & 46 Vict. cap. 53, and relative statutes and Acts of Sederunt; or to do further or otherwise as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

Minute of agreement.

PROCEDURE.

Intimation, advertisement, and service.

Appointment of curator *ad litem*, if necessary.

Remit to man of business and man of skill.

Decree in terms of reports.

Disposition in favour of purchaser to be lodged in process and approved of by Court.

After decree is pronounced, deed of acknowledgment by petitioner is lodged in process, and on a second report by man of business an interlocutor pronounced approving of same.

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23. PETITION FOR APPROVAL OF AGREEMENT OF SALE OF PART OF ENTAILED ESTATE FOR PAYMENT OF DEBT.

[Presented under the Entail Acts and relative Acts of Sederunt, and particularly the Act 31 & 32 Vict. cap. 84. This is a petition by an heir of entail in minority, with consent of his curators, for approval of agreement to sell part of his entailed estates to a public body for public purposes, and apply the price in partial extinction of debt on the estate.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B., with consent of C. D. and E. F., curators nominated to the said A. B. by his father, G. H., by deed of nomination of tutors and curators, executed by him of date [insert].

Humbly sheweth—

That the petitioner, the said A. B., is in minority, having been born on the [insert dates], and that the said C. D. and

E. F. are the accepting and surviving curators nominated to him by his father, the said deceased G. H., conform to the deed of nomination of tutors and curators above mentioned.

That the petitioner is the heir of entail in possession of the estates of [specify lands and where situated, and specify deed of entail under which held, and the destination thereof]. That the petitioner, the said A. B., is infeft or vest to the effect of infeftment in the said entailed lands and estates, conform to extract decree of special service in his favour, as nearest and lawful heir of tailzie and provision in special of his father, the said G. H., in the said lands and others, obtained before the Sheriff of Chancery [insert date of service and recording, &c.].

That by the said deed of entail above mentioned, the said entailed estates of [specify] are now settled upon the same series of heirs.

That in the year the said C. D. and E. F., as tutors of the petitioner (who was then in pupillarity), having been nominated to him by his father, the said deceased G. H., conform to the deed of nomination above mentioned, entered into an agreement, dated [insert] (herewith produced), with the then Commissioners of Police for the burgh of [insert], and I. J., solicitor, clerk to the said Commissioners, and the successors in office of the said Commissioners and clerk respectively, whereby the said C. D. and E. F., as tutors foresaid, agreed conditionally to sell and dispone, and the said Commissioners of Police agreed to purchase, subject to the real burdens therein and hereinafter specified, All and Whole that portion of ground in the parish of [specify heritage agreed to be sold].

That the price agreed upon was £ [insert], and the term of entry was as at the term [insert term of entry], at which date the said price was to be paid, but subject to the obtaining of your Lordships' approval, as mentioned in said agreement. The said price was paid at the term of [insert term], and was applied thereafter in payment *pro tanto* of debt affecting the fee of the said entailed lands of [specify], in manner after mentioned.

That on the foresaid agreement being approved by your Lordships and the price paid, the said tutors agreed, and bound and obliged themselves to grant in favour of the

Commissioners, a formal and valid disposition of the foresaid lands and others, containing all usual and necessary clauses (including clause of absolute warrandice, but excepting current leases and missives of lease), as these might be adjusted at the sight of the Court, under the application for approval of the agreement, and containing a special clause conceived in such terms as should, in the opinion of the legal advisers of the said tutors, create a valid real burden on the lands disponed by the disposition, to the effect that the lands disponed should in all time be used and maintained [here specify public purpose for which lands are sold]. It was further provided by said agreement that in the said disposition the said tutors should assign the writs conform to the inventory thereto annexed, but as the said writs contained subjects of greater value, the same should not be delivered, but the said tutors should bind themselves to make them furthcoming on all necessary occasions on receipt and obligation to redeliver the same within a reasonable time, and under a suitable penalty; and the said Commissioners accepted the said writs as sufficient, and agreed that they should not be entitled to require that any further writs or titles be made up by the sellers, or to call upon the sellers to exhibit any search of incumbrances. [If deemed necessary, any bonds or other debts affecting the entailed lands should be here specified if the price obtained for the lands so sold is to be applied in whole or part payment thereof.]

That by the sixth article of the agreement of sale above mentioned, it was provided that the parties thereto of the first part (being the petitioner's said tutors) should include the subjects thereby agreed to be sold in the first application they might make to your Lordships for approval of any agreement to sell other parts of the said entailed estates, but that they should not be bound to make application to your Lordships for approval of the said agreement, under the powers of the Entail Act of 1853, unless and until they found it necessary to apply to your Lordships in connection with other sales; but it was stipulated and agreed that, in the event of the second parties to the said agreement (being the said Police Commissioners of the burgh of [insert burgh]) desiring a disposition to be granted before the parties of the first part had made application to your Lordships, and were in a position to grant such disposition, then the parties of the first part should be

bound to present a special application for the sanction of your Lordships to the said agreement.

That the said parties of the second part have now, in terms of the said agreement, called upon your petitioner to make the present application to your Lordships.

That the petitioner and his said curators are satisfied that the sale of the said portion of ground, known as [insert name of lands], will be advantageous and beneficial for the petitioner himself as the heir of entail in possession of the said entailed estates, and not detrimental to the interests of the succeeding heirs of entail. The petitioner and his said curators are therefore desirous of obtaining your Lordships' approval of the said agreement of sale, and of the application of the said price of £ [if price is to be applied in payment of debt, insert] in payment *pro tanto* of the said debt of £ [insert], and authority to the petitioner to grant, with the consent of his said curators, in favour of the said Commissioners of Police of the burgh of [insert], a formal and valid disposition of the said portion of ground known as the [insert name], in implement of said agreement of sale.

That the three next heirs of entail who would be entitled to succeed to the petitioner in the said entailed estates immediately after him, in their order successively, are [specify three next heirs and whether in pupillarity or minority].

That the petitioner will duly make and produce a schedule, deponed to by him as correct, setting forth the particulars required by the 12th section of the Act 38 & 39 Vict. cap. 61, sub-sec. 5.

That the petitioner, with consent foresaid, makes the present application to your Lordships in terms of the Entail Acts and relative Acts of Sederunt, and particularly of the Act 31 & 32 Vict. cap. 84, sec. 9.

[The prayer will be for intimation, advertisement, and service on seven and fourteen days' induciæ, and will then proceed]: and thereafter, on resuming consideration of this petition, and [if necessary, appointing a curator *ad litem* to the heirs if in minority], and on being satisfied that the procedure has been regular and proper, and in conformity with the provisions of the statutes and relative Acts of Sederunt, to find that the proposed sale is advantageous and

beneficial for the petitioner as heir of entail in possession of the said estates, and not detrimental to the interests of the succeeding heirs of entail, and that the fee of the said entailed estates of [insert] and others was, at the date of the said agreement of sale, validly charged with the said debt of £ [insert] mentioned in the petition; and after such inquiry as may be deemed necessary—(1) to approve of the foresaid agreement of sale of the said portion of ground known as the [insert], by private bargain, for the said price of £ [insert], and to authorise the petitioner, with consent of his said curators, to execute and deliver a valid disposition of the said [insert] in fee simple, in ordinary form, and containing the real burdens and other clauses specified in the foresaid agreement of sale, in favour of the said I. J., clerk to the Commissioners of Police of the burgh of [insert], and his successors in office, and his and their assignees, in terms of the General Police and Improvement (Scotland) Act, 1862, sec. 391; and (2) to approve of the application of the said sum of £ [insert] towards payment of the said debt or part thereof in manner foresaid, and to decern; or to do otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

Remit to man of business and man of skill.

Decree in terms of report by man of business (1) approving of agreement of sale, and (2) approving of application of price received.

24. Petition for Authority to Substitute Bonds and Dispositions in Security for Rent Charges.

[Presented under 38 & 39 Vict. cap. 61, 41 & 42 Vict. cap. 28, 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner is the heir of entail in possession of the entailed lands and estate of , in the county of , under and in virtue of a disposition and deed of entail made and executed by [design] to and in favour of [state destination], which disposition and deed of entail is dated the day of , and recorded in the Register of Tailzies the day of .

That the petitioner is duly infeft in the said entailed lands and estates conform to [here state infeftment].

That certain parts and portions of the said entailed lands and estate comprehended in the said disposition and deed of entail are burdened with certain terminable rent charges, and particularly, *inter alia*, with the rent charges, amounting to per annum, specified in the Appendix hereto, for the repayment of sums advanced by to the petitioner, and expended by him in the improvement of the said entailed lands and estate, which sums were duly charged upon the portions of the said lands and estate specified in the several certificates or absolute orders constituting the rent charges, and which certificates or absolute orders were duly recorded in the Register of Sasines. As shewn in the table in the Appendix hereto, the advances in respect of which these rent charges were constituted amounted to , and the balance of the capital still outstanding amounts to the sum of .

That the petitioner has, prior to the date hereof, defrayed more than one-fourth part of the capital sum due under each of the certificates or absolute orders above referred to, and is now desirous to avail himself of the provisions of "The Entail Amendment (Scotland) Act, 1875," sec. 9, as amended by the "Entail (Scotland) Act, 1882," sec. 6, sub-sec. 4, for

the substitution of a bond and disposition in security, or bonds and dispositions in security, over the estate, other than the mansion-house, offices, and policies thereof, for the amount of the balances of the capital sums remaining due under the said certificates or absolute orders. The parties who are now in right of the said rent charges respectively, and who are specified in the Appendix, have consented to receive payment of the balances of capital remaining due to them respectively as aforesaid; and the petitioner is desirous of obtaining the sanction of your Lordships to the redemption of the said rent charges, and authority to grant bonds and dispositions in security over the said entailed lands and estate, other than as aforesaid, for the amount of the balances remaining due of the capital sums charged thereon as aforesaid.

That the petitioner is of full age, and not subject to any legal incapacity. He was born on the day of .

That the three heirs next entitled to succeed to the said entailed estate in their order successively after the petitioner are [specify].

That the said [name three next heirs] are [here state whether of full age or in minority].

The petitioner will produce, in the course of the proceedings to follow hereon, a schedule of debts and provisions signed and deponed to by him in terms of the Act 38 & 39 Vict. cap. 61, sec. 12, sub-sec. 5.

The procedure in this application is regulated by the Entail Acts, and especially by 38 & 39 Vict. cap. 61, sec. 12, and by the relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, for the appointment of a curator *ad litem* to minor heirs, and will then proceed]: and on resuming consideration of this application, with or without answers, and after such inquiry into the facts of the case as to your Lordships shall seem necessary, to approve of the agreement come to by and between the petitioner and the parties now in right of the rent charges before specified for the redemption of the said rent charges, and authorising the petitioner

to grant a bond and disposition in security, or bonds and dispositions in security, in favour of the said parties for the balances of capital due to them respectively in respect thereof, or in favour of any other person or persons willing to advance the same, and that over the said entailed lands and estate, or any parts or portions thereof, other than the mansion-house, offices, and policies thereof, with the interest thereof at the rate of five per centum per annum until repaid, but always with and under the provisions and declarations applicable to such bonds and dispositions in security contained in the said Acts of Parliament; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

Table of the Rent Charges referred to in the foregoing Petition.

Parties by whom advance made.
Parties now in right of rent charge.
Date of registration in Register of Sasines.
Amount of advance.
Annual rent charge.
Balance of capital outstanding at date of this petition.

PROCEDURE.

Intimation, advertisement, and service.

Remit to man of business.

Decree in terms of report by man of business, and remit to him to revise draft bond and see same executed and recorded.

Decree in terms of second report by man of business.

25. Petition to acquire Entailed Money in Fee Simple.

[Presented under the statutes 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B., Esquire [*design*],

Humbly sheweth—

That C. D., of [design], the petitioner's father, now deceased, was institute of entail in possession of the entailed estate of [specify], comprehending the lands, barony, mills, teinds, and others, lying in the parish of [specify], and sheriffdom of [specify], under and in virtue of a disposition and deed of entail, dated the [here specify date of entail and recording of same, name and designation of granter, destination to heirs therein contained].

That of this date [insert date in margin] an application was presented to your Lordships by the said C. D., under the provisions of the Acts of Parliament 11 & 12 Vict. cap. 36, sec. 28, 16 & 17 Vict. cap. 94, sec. 9, and 31 & 32 Vict. cap. 84, sec. 9, and relative Acts of Sederunt, for approval of an agreement to sell the entailed lands and estate of to E. F. at the price of £ [specify price], for payment of certain debts and provisions detailed in the said petition.

That after certain procedure in the said application, the Lord Ordinary (Lord) was pleased of this date [insert date in margin] to pronounce an interlocutor approving of the agreement to sell, and authorising the sale, and finding that the whole debts charged, or that might be charged, upon the fee of the said entailed estate formed preferable burdens upon, and fell to be paid, discharged, or provided for out of, the price of the said entailed estate.

That of this other date [insert date in margin] the Lord Ordinary pronounced a further interlocutor appointing [here specify names and designations of trustees] trustees, to receive and apply, subject to the orders of the Court, the price of the said estate, and ordaining the price to be consigned in the bank in name of the said trustees, and appointing the same

when so consigned, with the interest which might accrue thereon, to be received and applied by the said trustees, subject to the orders of the Court, and under burden of the whole debts, annuities, and others chargeable upon the fee of the said entailed estate of [specify].

That the said trustees accepted the trust, and received payment of the said price from the purchaser, and thereafter proceeded to administer the trust.

That in the course of proceedings in an application by certain of the trustees for resignation and discharge, and in which their resignation was approved and their discharge granted, and no trustees appointed in their stead, a remit was of this date [insert date in margin] made to G. H., chartered accountant, *inter alia*, to examine and audit the accounts of the trustees, who reported, of this other date [insert date in margin], that the accounts were sufficiently vouched and instructed, and that the capital of the trust estate consisted at that date of the sum of £ [specify], which report was approved of by the Court by interlocutor of [insert date]. That since that date the capital of the trust estate has been [here state whether capital has been reduced or increased and how invested].

[Here state, if necessary, what annuities, debts, or other obligations have been discharged by the trustees.]

That by the Act 11 & 12 Vict. cap. 36, intituled "An Act for the Amendment of the Law of Entail in Scotland," it is enacted (sec. 3) [take in section].

That by sec. 26 of the said Act 11 & 12 Vict. cap. 36, it is enacted [take in section].

That by the Act 38 & 39 Vict. cap. 61, intituled "An Act to further Amend the Law of Entail in Scotland," it is enacted (sec. 4) that [take in section].

That by the said Act 38 and 39 Vict. cap. 61, it is enacted (sec. 5), *inter alia*, that [take in section].

That by the Act 45 & 46 Vict. cap. 53, intituled "An Act to Amend the Law of Entail in Scotland," it is enacted (sec. 3) that [take in section].

That by sec. 12 of the said Act it is enacted that [take in section].

That by sec. 13 of the said last recited Act it is enacted that [take in section].

That the petitioner desires to avail himself of the Acts of

Parliament before recited, and to acquire in fee simple the said sum of £ held in trust as aforesaid.

That the petitioner is of full age, and is subject to no legal incapacity.

That the three next heirs who would have been entitled to succeed in their order to the said estate of [specify] had it not been sold, are [here specify names, &c., of next three heirs, and whether of full age or in minority or pupillarity, and whether a tutor or curator *ad litem* should be appointed to them. If any deeds of consent are to be produced by heirs, here state details].

That the petitioner will produce a schedule setting forth the entailer's debts, or other debts or provisions, if any, which would affect, or might have been made to affect, the fee of the said estate of had it not been sold, or the heirs of entail, and which are payable, or may become payable, out of the said sum of £ , or the income thereof.

That the petitioner makes the present application to your Lordships under and in terms of the Acts 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service on seven and fourteen days' induciæ, and will thereafter proceed]: and thereafter, on resuming consideration of this petition, and [if necessary appointing curator or tutor *ad litem* to minor heirs], and after such procedure and inquiry into the facts as your Lordships shall deem necessary, to find the procedure to have been regular and proper, and to interpone your Lordships' authority, and to grant warrant and authority to the petitioner to acquire the said sum of £ [specify] held in trust as aforesaid in fee simple, and to authorise and ordain the said [insert names of trustees] to assign and convey to the petitioner, or those in his right, the securities in which the said sum is invested, or to realise the said securities, and pay to the petitioner, or those in his right, the said sum itself, and also to pay over to the petitioner, or those in his right, the income accrued on the said sum of £ [specify] in their hands; and thereafter, to exoner, acquit, and discharge the said trustees of the foresaid trust, and of their whole

actings, intromissions, and management thereof; or to do further and otherwise in the premises as to your Lordships shall seem fit.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, appointment of curator *ad litem* and remit to man of business and actuary (if consents not produced).

Decree in terms of reports.

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26. PETITION FOR AUTHORITY TO UPLIFT AND ACQUIRE CONSIGNED MONEY IN FEE SIMPLE, WHERE NEXT HEIR CONSENTS TO PRAYER BEING GRANTED.

[Presented under 8 & 9 Vict. cap. 19, 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the entailed lands and estates of , lying within the parish of , and shire of , under and by virtue of the following deeds of entail, viz.:—[take in deeds of entail].

That the petitioner is infeft in the said entailed lands and estates, conform to the following decrees of special service by the Sheriff of Chancery in his favour as nearest lawful heir male of tailzie and provision in special of his father, the deceased C. D. [take in record of decrees of service].

That the Railway Company, incorporated by Act of Parliament, recently acquired some portions of the said estates for the purposes of their undertaking, authorised by [specify Act]. That for the land so acquired and permanent damage occasioned to the estates, compensation was fixed by

arbitration, in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, at the sum of £ . That this sum was consigned in the [insert bank and date of consignation], to be applied under the authority of your Lordships, in terms of the provisions of the said Lands Clauses Consolidation (Scotland) Act.

That the petitioner is of full age, and not subject to any legal incapacity, and that the three nearest heirs who at the date of presenting this application are for the time entitled to succeed to the said entailed estates in their order successively, immediately after the petitioner, are [take in, and state whether heirs are major or in minority or pupillarity].

That the petitioner is desirous of uplifting and acquiring in fee simple the said sum of £ at present deposited in the said [insert bank], with the interest that has accrued thereon, and for this purpose he makes the present application to your Lordships. That his eldest son and heir-apparent, the said has expressed his approval of this application being granted, and a formal deed of consent by him will be produced in the course of the proceedings to follow hereon.

That the petitioner makes the present application to your Lordships under and in terms of the Acts 8 & 9 Vict. cap. 19, 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service on next heirs, railway company, and bank, of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, for the appointment of a curator *ad litem* to minor heirs, and will then proceed]: and thereafter, upon resuming consideration of this petition, with or without answers, and after such inquiry into the facts as your Lordships shall deem necessary, to find that the procedure under this application has been regular and proper, and in conformity with the provisions of the statutes and relative Acts of Sederunt; to interpone authority to the proposed transaction, and grant warrant to and authorise the petitioner to uplift and acquire in fee simple the foresaid sum of £

deposited in the said bank, and also to grant warrant to and ordain the said Bank to make payment to the petitioner of the said consigned sums, with the whole interest due thereon, on his granting a receipt and acknowledgment for the same; and further, to find the said Railway Company liable in the expenses of this petition and the procedure following hereon relative to the uplifting of the said consigned sum of £ , and to decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.
Remit to man of business.
Decree in terms of report.

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27. PETITION FOR AUTHORITY TO UPLIFT AND INVEST CONSIGNED MONEY.

[Presented under the Entail Acts, and especially the Entail Amendment Act, 1873, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner is institute of entail in possession of, *inter alia*, the entailed lands and barony of , lying in the county of , under and in virtue of disposition and deed of entail made and executed by [name and designation of granter], dated said disposition and deed of entail the , and recorded in the Register of Entails the , all days of , and also recorded, with warrant of registration on behalf of the petitioner, in the Division of the General Register of Sasines applicable to the

county of for publication, and also as in the books of Council and Session for preservation, the day of .

That the petitioner is infeft in the said entailed lands and barony and others in virtue of the said recorded disposition and deed of entail.

That the Railway Company, incorporated by , in execution of the powers of "The Railway Act," and "The Railway Act," acquired certain portions of the said entailed lands and barony of , and others, extending to acres or thereby, and that the purchase money or compensation paid therefor was fixed by valuation and relative declaration, dated , by , civil engineer, , and , land valuator, , at the sum of £ .

That the Railway Company aforesaid, in virtue of an agreement dated , entered into between the petitioner and the said Railway Company, which agreement was confirmed and made binding on the parties thereto by "The Railway (General Powers) Act," [date] acquired certain other portions of the said entailed lands and barony of and others, extending to acres or thereby, and that the purchase money or compensation paid therefor was fixed by valuation and relative declaration, dated , by the said and at the sum of £ .

That the Railway Company aforesaid consigned in the Bank, (*first*) on , the said sum of £ , being the price of the subjects acquired by them first above mentioned; and (*second*) on the said sum of £ , being the price of the subjects acquired by them second above mentioned. These sums were consigned under the provisions of the Lands Clauses Consolidation (Scotland) Act, 1845, to the intent that the same might be invested or applied under the authority of the Court of Session to some one or more of the purposes specified in the said Act. The consignation receipts for said sums are herewith produced.

That by sec. 68 of the said Lands Clauses Consolidation (Scotland) Act, 1845, it is provided that until the purchase money or compensation payable in respect of land taken in

virtue of that Act can be applied to the purposes therein specified, the same may, *inter alia*, be laid out and invested in heritable securities.

That by sec. 79 of the said Lands Clauses Consolidation (Scotland) Act, 1845, it is, *inter alia*, provided that it shall be lawful for the Court to order the expense of investing, re-investing, or otherwise applying money consigned in terms of that Act, and of obtaining the proper orders of the Court for such application, to be paid by the promoters of the undertaking for whose purposes the land was taken; and by sec. 12, sub-sec. 6, of the Entail Amendment Act, 1875, it is enacted—"In every application it shall be competent to decern for payment of expenses of process against any of the parties to the proceedings, or to decern for payment thereof out of the entailed estate concerned, or out of the money consigned under the application."

That the petitioner is desirous to avail himself of the provisions of the said Lands Clauses Consolidation (Scotland) Act, 1845, to the effect that the said two sums of £ and £ consigned as aforesaid, amounting together to the sum of £ , should be uplifted and invested on good heritable security in Scotland, or in any of the securities, stocks, and investments specified in the Entail (Scotland) Act, 1882, secs. 23 (4) and 28, or in the securities, funds, or investments specified in the Trusts (Scotland) Amendment Act, 1884, the security writs and certificates therefor to be taken in name of trustees to be appointed for the purpose of receiving payment of the said sums of £ and £ , and of holding and applying the same in the manner specified in said Lands Clauses Consolidation (Scotland) Act, 1845. The petitioner begs to suggest that [names of persons suggested as trustees], who already hold large sums of money in trust for behoof of the same persons who are heirs of entail under the deed of entail above specified, should be appointed trustees to hold the said sums of £ and £ for the purposes foresaid.

That the petitioner is of full age, and not subject to any legal incapacity. That the three nearest heirs for the time being next entitled to succeed to the said entailed lands and barony and others in their order successively after the petitioner are [here state names and designations of three next heirs of entail, and whether in pupillarity or minority].

The procedure in this application is regulated by the Entail Acts, and especially the Entail Amendment Act, 1875, sec. 12, and by the relative Acts of Sederunt.

[The prayer will be for intimation advertisement, and service of seven and fourteen days, and, if necessary, the appointment of a curator *ad litem*, and will then proceed]: and on resuming consideration of this petition, with or without answers, and after such inquiry into the facts and circumstances as to your Lordships shall seem necessary, and on being satisfied that the procedure has been regular and proper and in conformity with the provisions of the said Acts and relative Acts of Sederunt, to interpone authority to the proposed uplifting and investment of the said sums of £ and £ consigned as aforesaid; and to nominate and appoint [fill in names of trustees], or such other person or persons as your Lordships may appoint, to act as trustees as aforesaid, to uplift the said sums of £ and £ ; and further, to grant warrant to and authorise the said trustees to be nominated and appointed as aforesaid to invest the said consigned sums of £ and £ , amounting *in cumulo* to the sum of £ , in heritable securities in Scotland, or in any of the securities, stocks, and investments specified in the Entail (Scotland) Act, 1882, secs. 23, sub-sec. (4), and 28, or in the securities, funds, or investments specified in the Trusts (Scotland) Amendment Act, 1884, the security writs and certificates therefor to be taken in their names as trustees foresaid; and also to authorise the petitioner to uplift and apply for his own use and behoof the whole interest (so far as the same has not been already paid) which has accrued or may yet accrue on the said two sums of £ and £ up to the date of uplifting; and further, to grant warrant to and ordain the said Bank to pay over to the said trustees to be nominated and appointed as aforesaid the said two sums of £ and £ , on their granting to the said bank a valid receipt or receipts therefor; and also to ordain the said Bank to pay to the petitioner the whole interest

which may be due as aforesaid upon the said two consigned sums, on his granting to the said bank a valid receipt or receipts therefor; to appoint an account to be given in of the whole expenses attending the proceedings under the present application and incident thereto, including the expense of the investment of the said sum of £ , and upon the amount thereof being ascertained and fixed, to find the Railway Company aforesaid liable to the petitioner in payment thereof, and to decern; or to do further or otherwise in the premises as to your Lordships shall seem just.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, appointment of curator *ad litem*, and remit to man of business.

Decree in terms of report by man of business and remit to him to see investments made.

Decree in terms of second report by man of business.

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28. PETITION FOR AUTHORITY TO FEU.

[The subjects proposed to be feued are held partly under a deed of entail and partly under a contract of excambion.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner is heir of entail in possession of the lands and barony of and others, and of the lands of and others, in the county of , and of the lands and barony of and others, and lands of and others, the lands of and others, and the lands of and others, in the county of , under and by virtue of (*first*) deed of entail granted dated the

and recorded in the Register of Tailzies the , both in the year , and also registered in the books of Council and Session the ; (*second*) contract of excambion entered into between on the one part, and the on the other part, dated and recorded in the Sheriff Court books of on the ; and (*third*) deed of entail granted by dated and recorded in the Register of Tailzies on the and in the books of Council and Session on the

That the petitioner has served as the nearest lawful heir of tailzie and provision in special of the deceased C. D. [the last heir], the petitioner's [specify relationship], and is duly infeft in the said lands and others under and in virtue of the foresaid deeds of entail and contract of excambion, conform to the following decrees of service:—[here specify decrees of service and other title].

That by the Entail Amendment Act, 1848, sec. 24, the Entail Amendment Act, 1853, sec. 6, and by the Entail (Scotland) Act, 1882, sec. 4, it is lawful for the petitioner, as heir of entail foresaid, with the approbation of the Court, and in accordance with and subject to the provisions and limitations of the said statutes, to grant feus of any part of the said entailed estates held by him under the said entails, other than the mansion-house, offices, or policies of the estate, to an extent not exceeding in all one-eighth part in value for the time of such estates.

That the petitioner is desirous to avail himself of the said statutes by obtaining the authority and approbation of the Court to feu out from time to time, in virtue of the foresaid statutes, the lands hereinafter specified, which are portions of the entailed lands and estates before mentioned, situated in the counties of , held by the petitioner under the foresaid deeds of entail and contract of excambion.

The portions of the said lands and estates so proposed to be feued are as follows:—[specify lands].

The portions above specified proposed to be feued as aforesaid are greatly less in value than one-eighth part of the lands and estates held by the petitioner under the foresaid entails and contract of excambion, and do not include

any of the mansions, offices, or policies of the said lands and estates.

That there is an increasing demand for feus in the several districts in which the lands above specified are situated, to meet the wants of the increase of population and the trade of the various districts, and it would materially add to the rental of the estates and improve the adjoining lands, as well as serve the public interest, if the feuing powers now sought were granted.

That the petitioner therefore makes the present application for the purpose of obtaining your Lordships' authority to grant feus as proposed, and in order that a minimum rate or minimum rates of feu-duty may be fixed, that a form or forms of feu disposition may be approved of, and the authority of the Court interponed to the effect of authorising the petitioner to grant feus from time to time as he shall think proper, in the form, or in one or other of the forms, so to be approved, subject to any conditions which your Lordships may deem necessary.

That the procedure in this application is regulated by the Entail Acts, and especially by the Entail Amendment Act, 1875, sec. 12, and by the relative Acts of Sederunt.

That the petitioner is of full age, and not subject to any legal incapacity.

That the heir of entail next entitled to succeed to the said entailed lands and estates immediately after the petitioner is his [specify relationship], E. F. [state if minor or major, also give names of second and third heirs and details as to age, &c.].

That the petitioner will produce, in the course of the proceedings to follow hereon, a schedule of debts and provisions, signed and deponed to by him in terms of the Entail Amendment Act, 1875, sec. 12, sub-sec. 5.

[The prayer will be for intimation, advertisement, and service of seven and fourteen days, and, if necessary, for appointment of a curator *ad litem* to minor heirs, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, and after such investigation or inquiry as your Lordships may be pleased to direct—(1) to approve of and to interpone your Lordships' authority to the granting of feus by the petitioner

from time to time of the several portions before specified of the said entailed estates, which are delineated and coloured, as before set forth, on the respective plans thereof produced herewith, or of such parts thereof as your Lordships may fix and determine, and that in such lot or lots as the petitioner may think suitable and proper; (2) to fix and determine the minimum rate or rates of feu-duty at which the same may respectively be feued; (3) to approve by interlocutor of a form or forms to be made use of under this application from time to time as such feus shall be granted; and (4) to authorise and empower the petitioner to grant feus in the form, or in one or other of the forms, approved of from time to time as he shall think proper, and under such declarations and conditions as may be deemed necessary by your Lordships; or to do otherwise in the premises as to your Lordships may seem fit.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, remit to man of business and man of skill to visit and examine ground proposed to be feued, and report as to the minimum rate of feu-duty at which ground should be feued.

Decree in terms of report.

Note.—In practice it is usual to lodge (in duplicate) in process plan of the portion of the entailed estate proposed to be feued, and draft feu charter or feu contract, which is adjusted at the sight of the reporter, and to the satisfaction of the Court. The Lord Ordinary subscribes one of the copies of the plan and feu charter or feu contract, and, when decree is granted, and before extract, they are transmitted to the Keeper of the Records for custody. The petitioner's agents do this on a certified copy of the interlocutor granting decree.

29. Petition for Authority to Feu.

[Presented under 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt. In this case the last heir of entail had granted, by trust disposition and settlement, liferent of estate and power to his wife to grant feus, which had been partly executed during her lifetime, and further authority to feu is now craved by the institute of entail.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*].

Humbly sheweth—

That the petitioner, A. B., is institute of entail in possession of the lands, estate, and barony of [specify lands, &c.], in the county of , under and by virtue of a deed of entail of, *inter alia*, the said lands, estates, and others, dated [specify lands, date of deeds, and constitution of entail]. The petitioner is duly infeft therein in virtue of the said deed of entail recorded as aforesaid.

That by the trust disposition and settlement and codicils C. D. conferred on his wife, Mrs. E. F., the liferent of the said estates, with power, *inter alia*, to grant feus at fair rates of feu-duty, and that the said Mrs. E. F. granted various feus in the exercise of that power. The said Mrs. E. F. died on . The petitioner is informed that at the date of her death there were various feus which she had agreed to grant to which the titles had not been given, and it will be necessary that the petitioner should now grant charters or other titles to the feuars.

That the petitioner is informed that the said Mrs. E. F. agreed to grant to [specify grantee] a feu of acres of ground situated near [specify situation of lands], and forming part of the entailed estate of [specify circumstances of feu, feu-duty, &c.]. The petitioner is satisfied that the rate of feu-duty stipulated for is, in the circumstances, and looking to the purpose for which the ground is to be used, a fair feu-duty, and he (the petitioner) is desirous of obtaining

the authority of the Court to grant a charter in implement of the arrangement made by the said Mrs. E. F.

That the petitioner is informed that the said Mrs. E. F. also agreed to grant the following feus, for which he is desirous of obtaining authority to grant charters:—[here specify feus agreed to be given by deceased liferenter].

That the petitioner has been requested by to grant them a feu of [here specify feu or feus agreed to be granted, feu-duty, &c.]. The petitioner is satisfied that a feu-duty of £ is, in the circumstances, a fair feu-duty, and he has agreed with [here specify persons wishing feus; also specify any other circumstances bearing on the question of granting more feus], subject to the approval of the Court, to grant a feu at that feu-duty.

That the petitioner is therefore desirous of exercising the powers conferred on heirs of entail by the 24th section of the Act 11 & 12 Vict. cap. 36, and the 6th and 13th sections of the Act 16 & 17 Vict. cap. 94, and of being enabled to grant feus of any portions of the ground in and adjoining the [town or village where feuing powers are desired], forming part of the said entailed estate, enclosed by a line on the plan herewith produced, which line starts [specify line of ground where this can be done]. The subjects within said line lie in the parish of and county of .

With that view he now makes application for the purpose of obtaining your Lordships' authority and approbation to grant feus as aforesaid, and in order that the minimum rate or rates of feu-duty may be fixed, that a form or forms of feu charter, feu contract, or feu disposition may be approved of as the form or forms to be made use of by the petitioner in following out the object of the present application; and that the authority of your Lordships may be interponed to the petitioner's granting feus from time to time as he shall think proper, in the form or forms so to be approved of, subject to any conditions or stipulations which your Lordships may deem necessary, all in terms of the provisions of the before-mentioned statutes, and of the statutes 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.

That the whole subjects proposed to be feued do not extend to one-eighth part in value of the entailed estate

of , and do not include any mansion-house, offices, or policies. The granting of the powers craved will be beneficial to and increase the value of the estates of the petitioner. The feus will be granted without any grassum, fine, or valuable consideration, other than the feu-duty thereof to be fixed by your Lordships.

That the petitioner is of full age, and not subject to any legal incapacity.

That the three heirs of entail next entitled in their order to succeed to the entailed estate of immediately after the petitioner are [name and design]. The first heir is of full age, and not subject to any legal incapacity. The said [here specify second or third heirs as the case may be, and whether minors or pupils]. They have no guardian other than their father.

That the petitioner will produce, in the course of the proceedings to follow hereon, a schedule setting forth the debts affecting the estate, in terms of the Act 38 & 39 Vict. cap. 61, sec. 12, and will also lodge a form or forms of the feu charter, feu contract, or feu disposition proposed to be used in connection with the ground intended to be feued.

That the petitioner makes the present application to your Lordships in terms of the Acts 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt, and all other Acts and statutes enabling him therein.

[The prayer will be for intimation, advertisement, and service on seven and fourteen days' induciæ, and, if necessary, for the appointment of a curator *ad litem* to minor heirs, and will then proceed]: and on resuming consideration hereof, with or without answers, and after such inquiry into the facts and circumstances as to your Lordships shall seem necessary, and on being satisfied that the procedure under this application has been regular and proper, and in conformity with the provisions of the said Acts and relative Acts of Sederunt, to interpone authority and grant decree authorising the petitioner to grant the proposed feus of the several pieces of ground specified in the petition, in favour of the parties therein mentioned, at the respective rates of

feu-duty therein specified, or at such rate or rates as to your Lordships may seem proper, and in such form or forms as may be approved of by your Lordships; and further—(1) to authorise and empower the petitioner to grant feus of the whole or any part of the said entailed estate above specified within the boundaries hereinbefore defined and shewn on the plan before referred to, and that at such times and in such portions as the petitioner may think fit; (2) to fix and determine by interlocutor of Court the minimum rate or rates of feu-duty at which the land delineated as aforesaid, or particular portions thereof, may be feued; (3) to approve of the form or forms of feu charter, feu contract, or feu disposition applicable to the foresaid portions of the lands proposed to be feued as the form or forms to be made use of under the present application from time to time as the successive feus shall be granted by the petitioner; and (4) to authorise and empower the petitioner to grant the said feus in the form or forms as approved of from time to time as he shall think proper, subject to any conditions or stipulations which your Lordships may deem necessary, all in terms of the provisions of the before-recited Acts, and to decern; or to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, and (where necessary) appointment of curator *ad litem*, remit to man of business and man of skill.

Decree in terms of report.

30. Petition for Authority to Feu.

[Presented under 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 38 & 39 Vict. cap. 61, and relative Acts of Sederunt. In this petition the consent of one heir only was necessary, the petitioner having been born prior to 1848. The next heir was major, and no curator *ad litem* was required.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of All and Whole the lands and barony of and others, lying in the county of , under a deed of tailzie dated the day of , and registered in the Register of Entails the day of made and executed by [here specify deed of entail], and the petitioner is infeft in the said lands, barony, and others as the nearest and lawful heir male of tailzie and provision in special of , his [state relationship of next heir; also state petitioner's title, and how made up].

That by the Act 11 & 12 Vict. cap. 36, intituled "An Act for the Amendment of the Law of Entail in Scotland," sec. 24, it is enacted [take in section].

That by the Act 16 & 17 Vict. cap. 94, intituled "An Act to extend the benefits of the Act of the 11th and 12th years of Her present Majesty for the Amendment of the Law of Entail in Scotland," sec. 6, it is enacted [take in section].

That the petitioner is of full age, and not subject to any legal incapacity. He was born in [specify date]. The heir of entail at present next entitled to succeed to the said entailed estates immediately after the petitioner, and the only heir to whom notice of the present application is required to be made in terms of the said 24th section of the said Act 11 & 12 Vict. cap. 36 is [insert name and designation of next heir]. The said is upwards of twenty-five years of age, and not subject to any legal incapacity.

That the lands embraced in the entail extend to about acres, the yearly rental of which is £ .

There is no mansion-house or offices on the property, and no part of it has yet been feued.

That the lands proposed to be feued extend to acres, which lie [specify locus], and are coloured on the plan to be produced in process, and are under one-eighth part in value for the time of the estate possessed by the petitioner under the before-mentioned deed of entail. The granting of feus as now proposed, while it would materially increase the value of the entailed estate, would also be highly beneficial to the petitioner and the succeeding heirs of entail.

That the petitioner is desirous, with your Lordships' leave, to grant feus of that portion of the lands delineated or coloured on the plan No. of process, and the present application is made for the purpose of obtaining your Lordships' authority and approbation to grant feus as aforesaid; and in order that the minimum rate or rates of feu-duty may be fixed, a form or forms of feu charter, feu contract, or feu disposition approved of as the form or forms to be used by the petitioner in following out the object of the present application from time to time as feus shall be granted; and that the authority of the Court may be interponed to the petitioner granting feus in the form or forms so to be approved of from time to time as he shall think proper, subject to any conditions or stipulations which your Lordships may deem necessary—all in terms of the provisions of the before-recited statutes.

That the petitioner, in pursuance of what is required by the 5th sub-section of sec. 12 of the Act 38 & 39 Vict. cap. 61, will produce with this application a schedule, signed by him, and deponed to by him as correct, setting forth that there are no entailer's debts or other debts, and no provisions to husbands, widows, or children affecting, or that may be made to affect, the fee of the said entailed lands and estate, or the heirs of entail that are not secured by having been placed on the record, excepting the debts and provisions set forth in the schedule.

That the petitioner will duly lodge in process a form or forms of feu charter, feu contract, or feu disposition for the approval of the Court, as before mentioned, subject to such modification as to your Lordships shall seem proper.

That the petitioner makes the present application to your Lordships under and in terms of the foresaid statutes 11 & 12

Vict. cap. 36, and 16 & 17 Vict. cap. 94, and 38 & 39 Vict. cap. 61, and of the relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and will thereafter proceed]: and thereafter, on resuming consideration of this petition, with or without answers, and after such further investigation or procedure, if any, as your Lordships may be pleased to direct—(1) to authorise and empower the petitioner to grant feus of the portion of the said entailed estates before specified, and delineated on the plan before referred to, and that at such times and in such portions as the petitioner may think fit; (2) to fix and determine by interlocutor of the Court the minimum rate or rates of feu-duty at which the said portion of the said entailed lands and estate may be feued; (3) to approve by interlocutor of the form or forms of feu charter, feu contract, or feu disposition to be lodged in process by the petitioner, as the same may be altered or adjusted under your Lordships' authority, as the forms to be made use of under the present application from time to time as such feus respectively shall be granted; and (4) to authorise the petitioner to grant the said feus, in the forms so approved of from time to time as he shall think proper, subject to any conditions or stipulations which your Lordships may deem proper, all in terms of the provisions of the before-recited Acts, and to decern *ad interim;* or to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.
Remit to man of business and man of skill.
Decree per reports.

Note.—The draft feu charter, feu contract, or feu disposition and relative plan are lodged in process (in duplicate) and adjusted at the sight of the reporter and to the satisfaction of the Court. When decree is granted, one of the

duplicates subscribed by the Lord Ordinary falls to be transmitted to the Keeper of the Records, there to lie for inspection in the future. This is done by the petitioner's agents transmitting same on a certified copy of the interlocutor granting decree.

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31. Petition for Authority to Grant Feus and Leases.

[Presented under 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, and relative Acts of Sederunt, and was at the instance of an entail proprietor whose estates had been sequestrated, and with consent of his trustee and commissioners on his estates.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B., with consent of C. D., trustee on the sequestrated estate of the said A. B., conform to act and warrant by the Sheriff of , dated the day of ; and also with consent of [here specify names of commissioners], the commissioners on the said sequestrated estate,

Humbly sheweth—

That the petitioner, A. B., is institute of entail in possession of the entailed lands and estate of and others, in the counties of and , under a deed of entail thereof [specify deed, with date of execution and recording, destination, &c., infeftment].

That by the Act 11 & 12 Vict. cap. 36, intituled "An Act for the Amendment of the Law of Entail in Scotland," it is enacted, sec. 24 [take in section].

That by the Act 16 & 17 Vict. cap. 94, intituled "An Act to extend the benefits of the Act of the 11th and 12th years of Her present Majesty, for the Amendment of the Law of Entail in Scotland," it is enacted, sec. 6 [take in section].

That by the said Act 16 & 17 Vict. cap. 94, it is enacted, sec. 13 [take in section].

That by the said Act 11 & 12 Vict. cap. 36, it is further enacted, sec. 36 [take in section].

That the petitioner, the said A. B., proposes to grant, with consent foresaid, feus or building leases of the portions of All and Whole [here specify lands proposed to be feued or leased], which portions are delineated and coloured on the plan herewith produced [and where necessary, to except lands already feued or leased], but under exception of the portions thereof which have already been feued or leased upon building lease.

That the whole ground proposed to be feued or leased extends to acres or thereby imperial measure.

That the petitioner, the said A. B., makes the present application, with consent foresaid, for the purpose of obtaining your Lordships' authority to grant feus and building leases of the whole or any parts of the portions of the said entailed lands and estate, situated in the county of , at the minimum rate of £ per imperial acre, and that the forms of a feu-charter or feu contract or feu disposition, and of a building lease, applicable to the portions of the said lands and estate above described, may be approved of by your Lordships as the forms to be made use of in following out the object of this application from time to time as feus or leases may be granted; and that the authority of the Court may be interponed to the granting from time to time by the petitioner, with consent foresaid, of feus and leases in the forms so approved of, subject to any conditions or stipulations which your Lordships may deem necessary, all in terms of the before-recited statutes.

That the lands proposed to be feued or leased do not exceed in all one-eighth part in value of the said lands and estates of and others. They do not include the mansion-house, offices, and policies of the estates, nor any part thereof; nor is there a mansion-house or offices thereon.

That the feus or building leases are to be granted without any grassum, fine, or valuable consideration other than the feu-duty to be paid to, or stipulated for by, the petitioner. The granting of the powers craved will increase the rental of said estates, and will be for the benefit of the petitioner and future heirs of entail.

That there are no entailer's debts, or other debts or provisions to husbands, widows, or children, which affect, or may be made to affect, the said entailed lands and estates, or the heirs of entail succeeding thereto, which have not been

secured by being placed on the record, as is instructed by the affidavit made and executed in terms of 38 & 39 Vict. cap. 61, sec. 12, sub-sec. 5, to be produced in the course of the procedure following hereon.

That the three nearest heirs of entail who, at the date of presenting this application, are for the time entitled to succeed to the said entailed lands and estates of
and others, in their order successively, immediately after the petitioner, the said A. B., are [fill in names of three next heirs, and whether major or minor, and if any legal guardian or administrator, give his name, and also, if minor, state that a curator *ad litem* may be necessary].

That the petitioner will duly lodge in process forms of a feu charter or feu contract, and of a building lease, to be made use of by the petitioner from time to time as feus or building leases of the portions of the said entailed lands and estate before described come to be granted.

That the petitioner makes the present application to your Lordships in terms of the said Acts 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, and under and in terms of the relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service on seven and fourteen days' induciæ, and, if curator *ad litem* necessary, it will be prayed for, and will then proceed]: and on resuming consideration of this petition, with or without answers, and after such further investigation and inquiry as your Lordships may be pleased to direct, to find that the procedure has been regular and proper; to authorise and empower the petitioner, the said A. B., to grant, with consent foresaid, feus or building leases of the portions of the said entailed lands and estate before described, and that at such times and in such portions as the petitioner may think fit; to fix and determine the minimum rate or rates of rent or feu-duty at which the portions of the said entailed lands and estate above described, and particular parts thereof, may be feued or leased, and for that purpose to direct such inquiry into the value of the said lands proposed to be feued or leased, or of the different parts thereof, as may be

considered necessary; to approve of the forms of feu charters or feu dispositions or feu contracts, and of the forms of building leases applicable to the foresaid several pieces of ground respectively proposed to be feued or leased, to be lodged in process by the petitioner, subject to any conditions or stipulations which your Lordships may deem necessary, as the forms to be made use of under the present application, as the successive feus or leases shall be granted as aforesaid; and to authorise and empower the petitioner, with consent foresaid, to grant the said feus and building leases in the forms respectively so approved of from time to time to such persons as he and the said , as trustee foresaid, shall think proper, subject to any conditions or stipulations which your Lordships may deem necessary, all in terms of the provisions of the before-recited Acts; or to do further and otherwise in the premises as to your Lordships shall seem just.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, remit to man of business and man of skill.

Decree in terms of reports.

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32. PETITION TO CHARGE ENTAILED ESTATE WITH IMPROVEMENT EXPENDITURE.

[Presented under 11 & 12 Vict. cap. 36, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B., Esquire, of .

Humbly sheweth—

That the petitioner is heir of entail in possession of the entailed estates of , in the counties of

and , under and in virtue of a disposition and deed of entail made and executed by [design], to and in favour of [state destination].

That the petitioner is duly infeft in the said entailed estates conform to [state writs upon which petitioner's infeftment proceeds].

That by the Act 11 & 12 Vict. cap. 36, intituled "An Act for the amendment of the Law of Entail in Scotland," it is enacted (sec. 16) [take in section].

That by the 18th section of the said Act 11 & 12 Vict. cap. 36, it is enacted [take in section].

That by the Act 38 & 39 Vict. cap. 61, intituled "The Entail Amendment (Scotland) Act, 1875," it is enacted (sec. 7) [take in section].

That by the said Act 38 & 39 Vict. cap. 61, it is enacted (sec. 8) that [take in section].

That by the 6th section of the Entail (Scotland) Act, 1882 (45 & 46 Vict. cap. 53), it is, *inter alia*, provided, "Where application is made for authority to borrow and charge for improvement expenditure, the Court or Sheriff may grant authority to execute bonds and dispositions in security for three-fourths of the sum authorised to be borrowed, and whether the improvements shall have been executed at the date of the application or are contemplated."

That during the years to the petitioner expended various sums of money in executing improvements on the said entailed estates of and others, of a substantial nature, beneficial to the estates, being of the nature and description specified in the Entail Acts, and particularly in the said Act for the Amendment of the Law of Entail in Scotland, 11 & 12 Vict. cap. 36, and the said Entail Amendment (Scotland) Act, 1875. The amount of outlay *bona fide* so expended by the petitioner during the period from to is £ and upwards. A detailed account of the expenditure made on the said improvements will be produced in the course of the proceedings to follow hereon.

That the petitioner is desirous of availing himself of the provisions of the said recited Acts, and of obtaining the authority of your Lordships to borrow the said sum of £ , and the relative expenses, on the security of the said entailed estates, and that in the

manner and subject to the provisions contained in the said Entail Acts.

That the petitioner is of full age, and subject to no legal incapacity.

That the three nearest heirs of entail entitled to succeed to the said entailed estates of and others, in their order successively immediately after the petitioner, under the destination contained in the foresaid deed of entail, with whose consents the petitioner might disentail the said estates, are the petitioner's sons—(1) ; (2) ; and (3) , all residing at . The said (1) and (2) are of full age, and subject to no legal incapacity, but the said (3) is in minority, and has no curator or guardian except the petitioner, who, as his father, is his administrator-in-law.

That in terms of the said Entail Amendment (Scotland) Act, 1875 (sec. 12, sub-sec. 5), a schedule will be produced signed by the petitioner, and deponed to by him as correct, setting forth that there are no entailer's debts or other debts, and no provisions to husbands, widows, or children affecting, or that may be made to affect, the fee of the said entailed estates of , or the heirs of entail that are not secured by having been placed on record, or if there be any such debts or provisions that are not so secured, setting forth the amount and other particulars of the same in terms of the said statute.

That the petitioner makes the present application to your Lordships under and in terms of the Entail Acts, and particularly the Acts 11 & 12 Vict. cap. 36, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and within fourteen days if furth thereof, and, if necessary, for the appointment of a curator *ad litem* to minor heirs]: and on resuming consideration of this petition, with or without answers, and after such inquiry and report into the circumstances set forth herein as your Lordships shall consider necessary, to find that the procedure under the petition has been regular and proper, and in conformity with the provisions of the statutes and relative Acts of Sederunt; and

to interpone your Lordships' authority, and to find and declare that the petitioner's expenditure of £ , or such other sum as shall be ascertained to have been expended by the petitioner in improving the said entailed estates, as set forth in the petition, was made on account of improvements of the nature contemplated by the said Act 11 & 12 Vict. cap. 36, and the said Act 38 & 39 Vict. cap. 61; and to grant warrant to and authorise the petitioner to borrow on the security of the said entailed estates of , in order to defray the cost of the improvements before mentioned, being improvements of the nature contemplated in the said Act 11 & 12 Vict. cap. 36, and the said "Entail Amendment (Scotland) Act, 1875," the said sum of £ , or such other sum as may be ascertained by your Lordships to have been *bona fide* expended by the petitioner on such improvements, together with such sum as your Lordships may find to be the actual or estimated cost of this application and the proceedings therein, and of obtaining the loan and granting security therefor as after mentioned; and to grant warrant to and authorise the petitioner to execute in favour of any person or persons he may think fit a bond or bonds of annual rent in ordinary form over the said entailed estates of , other than the mansion-house, offices, and policies thereof, binding himself and the heirs of tailzie to make payment of an annual rent during the period of twenty-five years from and after the date of the decree to be pronounced in this application, or during such part of the said period of twenty-five years as may remain unexpired at the date of such bond or bonds respectively, such annual rent not exceeding the sum of £7 2s. for every £100 of the whole of the said sum of , or of such other sum as may be ascertained by your Lordships to have been *bona fide* expended by the petitioner as aforesaid, and so on in proportion for any greater or less sum, together with such sum as your Lordships may find to be the actual or estimated cost of this application and the proceedings therein, and of

obtaining the loan and granting security therefor, such annual rent to be payable by equal moieties half-yearly, beginning the first term's payment at the first term of Whitsunday or Martinmas after the date or the respective dates of the bond or bonds to be granted by the petitioner for the proportion of annual rent then due; or otherwise, in the option of the petitioner, to grant warrant to and authorise him to charge the fee and rents of the said entailed lands and estates of and others, other than the mansion-house, offices, and policies thereof, with three-fourth parts of the said sum of £ or of such other sum as may be ascertained to have been *bona fide* expended by him as aforesaid, together with such sum as your Lordships may find to be three-fourths of the actual or estimated cost of this application and the proceedings therein, and of obtaining the loan and granting security therefor, by granting in favour of any person or persons he may think fit a bond and disposition in security, or bonds and dispositions in security, in ordinary form over the said lands and estates and others, other than as aforesaid, for the amount of such three-fourth parts and expenses as aforesaid, with the interest thereof at the rate of £5 per centum per annum from the date of such advance until repaid, and with corresponding penalties, such bond and disposition in security, or bonds and dispositions in security, binding the petitioner and his heirs of entail in their order successively to repay the principal sum therein, with interest and penalties as aforesaid, and containing a power of sale in the ordinary form, and also containing all clauses usual in bonds and dispositions in security over estates in Scotland held in fee simple; but always with and under the provisions and declarations applicable to such bonds and dispositions in security contained in the said Acts and other Acts relative thereto, and to pronounce such other order or orders; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

Appointment of curator *ad litem*. Remit to man of business and man of skill.

Decree in terms of reports, and remit to man of business to see bond executed and recorded.

Decree in terms of second report by man of business.

Note.—The estimated expenses of the application and procedure following thereon is added to the amount authorised to be charged.

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33. PETITION FOR AUTHORITY TO UPLIFT AND APPLY CONSIGNED MONEY IN REPAYMENT OF EXPENDITURE ON IMPROVEMENTS, AND TO CHARGE ESTATE WITH FURTHER EXPENDITURE.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the estate of [insert estate and county], under and in virtue of a deed of entail [specify entail, insert a narrative of provisions of deed of entail, destination, &c.].

That the petitioner is infeft in the said estate, conform to extract decree of special service [insert petitioner's title].

That the Railway Company, incorporated by Act of Parliament, recently acquired a portion of the said estate for the purposes of the railway and works authorised by Railway Act, . That for the land so acquired, and permanent damage occasioned to the estate, compensation was fixed by arbitration, in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, at the sum of £ . That this sum was consigned in the Bank, at Edinburgh, on [here give date of consignation], to be

applied under the authority of your Lordships, in terms of the provisions of the said Lands Clauses Consolidation (Scotland) Act.

That the petitioner has, since his succession to the said estate, expended the sum of £ in executing permanent improvements and improvements of the nature contemplated by the Entail Amendment (Scotland) Act, 1875, upon the said entailed estate. That the improvements so executed, and which will be found detailed in the account produced herewith, consist principally in [state the nature of improvements]. That the said improvements are of a substantial nature and are beneficial to the said entailed estate as at the date hereof to the extent of the said sum of £

That the petitioner is desirous to have it found and declared that the foresaid sum of £ has been to the extent of at least the sum of £ expended by him on permanent improvements of the nature contemplated by the 26th section of the Entail Amendment Act, 1848, and to obtain your Lordships' authority to uplift the foresaid consigned sum of £ [consigned sum], and all interest accrued thereon, and to apply the principal in repayment of the said expenditure, amounting to that sum, and the interest for his own use and behoof. That the petitioner is further desirous to have it found and declared that the remainder of the improvements executed by him are of the nature contemplated by the Entail Amendment Act, 1875, and that the expenditure thereon, amounting to £ (being the balance of the said sum of £) [insert amount of expenditure], after deducting the said sum of £ [consigned sum], or such other sum as may be ascertained to have been expended thereon, was *bona fide* made by the petitioner while he was heir of entail in possession of the said entailed estate, and to obtain authority to execute a bond or bonds of annual rent over the said entailed estate, or any portion thereof, for payment of an annual rent not exceeding £ per cent. on the said sum of £ [insert balance], or such other sum as shall be ascertained to have been expended by the petitioner on the said improvements; or otherwise, in his option, to execute a bond and disposition in security, or bonds and dispositions in security, over the said entailed estate, other than the mansion-house, offices, and policies thereof, for three-fourth parts of the sum or sums on

which the amount of the said bond or bonds of annual rent, if granted, would be calculated.

That the petitioner is of full age, and the three nearest heirs who at the date of presenting this application are for the time entitled to succeed to the said entailed estate, in their order successively, immediately after the petitioner, are—(1) [insert names of next heirs, and specify those who are major and those, if any, in minority or pupillarity].

That the petitioner makes the present application to your Lordships under and in terms of the Acts 8 & 9 Vict. cap. 19, 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service on seven and fourteen days' induciæ, and, if necessary, for the appointment of a curator *ad litem* to minor heirs, and will then proceed]: and thereafter, upon resuming consideration of this petition, with or without answers, and after such inquiry into the facts as your Lordships shall deem necessary, to find that the procedure under this application has been regular and proper, and in conformity with the provisions of the statutes and relative Acts of Sederunt; to find and declare that the foresaid sum of £ [insert consigned sum] or such other sum as your Lordships may be pleased to fix, has been expended by the petitioner on permanent improvements on the said entailed estate, of the nature contemplated by the 26th section of the said Act 11 & 12 Vict. cap. 36; to approve of the proposed application of the said consigned money, and to grant warrant to and authorise the petitioner to uplift the foresaid principal sum of £ consigned in bank as aforesaid, with the interest which has accrued thereon, and to apply the said principal sum in repayment to himself of the foresaid sum of £ , or such other sum as your Lordships may fix, as the amount expended on permanent improvements, and also to apply for his own use and behoof the interest which has already accrued or may yet accrue on the said consigned sum; and further, to grant warrant to and ordain the said [insert bank] to make payment to the

petitioner of the said consigned sum, with the whole interest due thereon, on his granting a receipt and acknowledgment for the same; and further, to find and declare that the whole remaining improvements executed by the petitioner on the said entailed estate are of the nature contemplated by the said Act 38 & 39 Vict. cap. 61; that the foresaid sum of £ [insert balance], the balance of the said sum of £ [insert total of expenditure], after deducting the said sum of £ [insert consigned sum], expended on said improvements, or such other sum as may be ascertained by your Lordships to have been expended thereon, was *bona fide* expended by the petitioner while heir of entail in possession of the said entailed estate, and that the said improvements are of a substantial nature and beneficial to the estate as at the date of this application to the extent of the said sum of £ [insert balance of improvements], or such other sum as may have been ascertained to have been expended as aforesaid; to grant authority to the petitioner to borrow the said sum of £ [insert balance of sum spent on improvements], or such other sum as may be ascertained by your Lordships to have been expended as aforesaid, and such sum as your Lordships may find to be the actual or estimated amount of the cost of this application and the proceedings therein (except in so far as the Railway Company are liable for the proportion thereof relative to the uplifting of the said sum and the application thereof), and of obtaining the loan and granting security therefor; and to grant warrant to and authorise the petitioner to charge the fee and rents of the said entailed estate, other than the mansion-house, offices, and policies thereof, or the fee and rents of any portion of the said estate other than as aforesaid, with a bond or bonds of annual rent, binding himself and his heirs of tailzie to make payment of an annual rent for twenty-five years from and after the date of such authority, such annual rent to be payable by equal moieties half-yearly, and to be at a rate not exceeding £7 2s. per annum for every

£100 so authorised to be borrowed, and so in proportion for any greater or less sum; or otherwise, in the option of the petitioner, with a bond and disposition in security, or bonds and dispositions in security, for three-fourths of the sum on which the amount of such bond of annual rent, or bonds of annual rents, if granted, would be calculated, in terms of the said Acts 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, with interest thereon at the rate to be stated in such bond and disposition in security, or bonds and dispositions in security, from the date aforesaid till repaid, and corresponding penalties, such bond and disposition in security, or bonds and dispositions in security, containing a power of sale, and all other clauses usual in bonds and dispositions in security granted over estates in Scotland held in fee simple; and also to find the said
Railway Company liable in the proportion of the expenses of this petition and the procedure following hereon relative to the uplifting of the said consigned sum of £ and the application thereof as aforesaid, and to decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ (if necessary), appointment of curator *ad litem* to minor heir or heirs, and remit to man of business and man of skill.

Decree in terms of report by man of business, and remit to him to see draft bond executed and recorded and deed of acknowledgment and discharge executed.

Decree in terms of second report by man of business.

34. Petition for Authority to Uplift and Apply Consigned Money in Repayment of Expenditure on Permanent Improvements.

[Presented under Lands Clauses Consolidation (Scotland) Act, 1845, the Entail Acts, and relative Acts of Sederunt. In this petition the Sheriff had fixed the sum to be charged as for improvements in a prior petition.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the entailed estates of and others, in the county of , under and in virtue of a deed of strict entail, dated [insert description of deed, granter, and heirs in destination thereof].

The petitioner is [state relationship of petitioner to entailer or last heir, and when he succeeded, date of service, and recording same].

That the Railway Company consigned in the [insert bank] upon the day of the sum of £ , being compensation for land taken from the said entailed lands and estate of , in the parish of , and county of , belonging to the petitioner as heir of entail foresaid, the same being so taken for the purpose of constructing the [works mentioned] under the powers [specify Acts under which lands were taken and finding under which consignation came to be made, and date of decree-arbitral, if any].

The said sum was consigned in terms of "The Lands Clauses Consolidation (Scotland) Act, 1845," to the intent that the same should be invested and applied under the authority of the Court of Session for some one or more of the purposes specified in "The Lands Clauses Consolidation (Scotland) Act, 1845," with respect to purchase money or compensation payable in respect of any lands purchased or taken from any heir of entail or other party under disability, under the declaration that, until the said sum should be so invested or applied, the

interest thereof should be payable to the petitioner, or to the heirs of entail succeeding to him for the time in the said estates. A copy of the said consignation receipt is herewith produced.

The Entail Amendment Act, 1848, sec. 26, provides that such consigned sums may be applied, at the sight of the Court, *inter alia*, in repayment of money already expended in permanently improving such entailed estates.

By the last mentioned statute, particularly by secs. 33, 34, 35, and 36 thereof (as modified by the 12th section of the Entail Amendment Act, 1875), the form and manner in which an heir of entail may present an application to the Court by way of summary petition, and the procedure to follow thereon, are prescribed.

That on the petitioner presented a petition in the Sheriff Court of at for authority to charge the said entailed estates with improvement expenditure, the first deliverance wherein is dated , and that in the course of the proceedings thereunder, an interlocutor was pronounced therein on by the Sheriff-Substitute at finding that the improvements mentioned in the condescendence annexed to the petition, and already executed on the said estates, were of the nature contemplated by or falling within the Act 10 Geo. III. cap. 51, and subsequent Entail Acts, and that the petitioner had *bona fide* expended (in addition to prior expenditure) the sum of [insert whole sum expended] on said improvements on the said estates, and that the same were all executed subsequent to the fourteenth day of August, eighteen hundred and forty-eight, and granted warrant to and authorised the petitioner to charge the fee and rents of the said estates, other than the mansion-house, offices, and policies thereof, with the sum of [insert three-fourths], being three-fourth parts of the said sum of [insert whole], by granting in favour of any creditor or creditors who might advance the said amount of [insert three-fourths] a bond and disposition or bonds and dispositions in security, in the ordinary form, over the said entailed estates, or any part thereof, other than the mansion-house, offices, and policies, for such sums as should together not exceed that amount, with the interest thereof at the rate of five per centum per annum from the date of such advances till paid,

and with the corresponding penalties, such bond and disposition in security, or bonds and dispositions in security, being in ordinary form, containing all the clauses usual in bonds and dispositions in security granted over estates in Scotland held in fee simple, and in virtue whereof a bond and disposition in security for the said sum of £ was granted by the petitioner in favour of himself, and was found by the said Sheriff-Substitute to be duly executed, and authority was interponed thereto, and the same authorised by him to be recorded in ordinary form, all conform to another interlocutor of the said Sheriff-Substitute, dated , all as the said bond and disposition in security bears, and which is dated and recorded in the said Division of the General Register of Sasines on [insert date of registration].

The petitioner is desirous of obtaining your Lordships' authority to uplift the said sum of £ [insert sum consigned] consigned in bank as aforesaid, with a view of applying the same in extinction *pro tanto* of the said bond and disposition in security for the said sum of [insert three-fourths].

The petitioner is of full age, and not subject to any legal incapacity. He was born on the day of , and is thus entitled to disentail the said estates, at the sight of the Court, without any consents.

The petitioner makes the present application to your Lordships in terms of "The Lands Clauses Consolidation (Scotland) Act, 1845," and the Entail Acts and relative Acts of Sederunt, for authority to uplift and apply the said sum of [sum in bank] in repayment *pro tanto* of the said sum of [three-fourths] expended by him on permanent improvements on the said entailed estate as aforesaid, together with the interest due and to become due thereon up to the date of uplifting the same.

In terms of "The Lands Clauses Consolidation (Scotland) Act, 1845," sec. 79, the petitioner is entitled to recover the expenses of this application to your Lordships, and all reasonable charges and expenses incident thereto, from the said [insert railway or other company].

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and will then proceed]: and on resuming consideration of this

petition, with or without answers, and upon a partial discharge of the said bond and disposition in security to the extent of the said sum of £ being executed and recorded, to grant warrant to the petitioner to uplift and receive the said sum of £ and to apply the same in repayment to himself *pro tanto* of the said sum of [insert three-fourths of advances] contained in said bond and disposition in security, and also to authorise the petitioner to uplift and apply for his own use and behoof the whole interest which has accrued, or may yet accrue, on the said sum of [insert consigned sum] up to the date of uplifting the same; to grant warrant to and ordain the [insert bank] aforesaid to pay to the petitioner the said sum of £ , with the whole interest which may be due as aforesaid upon the said consigned sum, on his granting to the said bank a valid receipt or receipts therefor; and to appoint an account to be given in of the whole expenses attending the proceedings under the present application and incident thereto, as also the expenses incident to the partial discharge of the said bond and disposition in security, including all reasonable charges and expenses connected therewith; and upon the amount thereof being ascertained and fixed, to find the said [insert railway company] liable to the petitioner in payment thereof; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

Remit to man of business.

Decree in terms of report, and remit to him to see draft discharge executed and recorded.

Decree in terms of second report by man of business.

35. Petition for Authority to Apply Trust Funds in Payment of Improvements.

[Presented under 11 & 12 Vict. cap. 36, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the entailed lands and estate of , in the parish of , and county of , under a [specify deed or deeds of entail and date of recording].

That the petitioner succeeded to the said entailed lands and estate on the death of [specify date of succession, service, and recording of same].

That the petitioner, as heir of entail foresaid, of this date [insert date in margin] presented a petition to your Lordships in virtue of the Act 11 & 12 Vict. cap. 36, sec. 25, and the Act 31 & 32 Vict. cap. 84, sec. 9, for, *inter alia*, approval of a conditional agreement between the petitioner and C. D. to sell by private bargain certain portions of said entailed estate, known as the farm and lands of , and fully described in the prayer thereof, at the price of £ , conform to minute of sale, dated , and for authority to carry through the sale thereof accordingly; and thereafter to apply the said price, less expenses, in payment and redemption of certain annual rents and rent charges affecting the fee and rents of the said estate, and in repayment to the petitioner of a sum expended by him upon permanent improvements upon the said estate, and in payment of the expenses of and incident to so applying the money, and to have the surplus remaining after such payments invested by trustees to be appointed by the Court, or applied otherwise under the provisions of the Acts of Parliament relating to entails in Scotland.

That after sundry procedure your Lordships were pleased, by interlocutor of this date [insert date in margin], to approve of the said agreement to sell the foresaid lands, and to authorise the sale thereof, and the application of the price in redemption of the said debts, in payment of the said

improvement expenditure to the extent of £ [specify amount authorised to be applied], and in payment of expenses.

That the said sale having thereafter been carried through, and the purchaser having paid the price, viz., £
and interest which had become due by him thereon - - - - - - - -

amounting together to - - - - - £
there was paid out of the same, in accordance with the authority given—(1) the redemption price of said debts, - - £
and (2) said sum of - -

and the balance of - - - - - £
was consigned in bank.

That in terms of a further interlocutor of this date [insert date in margin] the said consigned money, with £ of bank interest accrued thereon, in all, £ , has been uplifted, and there have been paid to the petitioner therefrom—

(1) Said interest on the price, - - £
(2) The said interest accrued on the deposit receipt, - - - -
(3) The expenses attending the sale and proceedings, amounting to - -

In all - - - £

and the balance of the price, amounting to £ , has been paid over to the trustees appointed in terms of the Entail Acts by said last-mentioned interlocutor [insert names of trustees].

That by the Act of Parliament 11 & 12 Vict. cap. 36, sec. 26, it is enacted [take in section].

That the petitioner has since the date of said sale executed permanent improvements on said entailed estate at an outlay of £ . These improvements have been executed by him between [specify dates and nature of the improvements]. A detailed statement of said expenditure will be produced in the proceedings to follow herein.

That the petitioner contemplates executing certain further improvements on the said estate of a permanent nature, at a cost of £ or thereby, which will exceed the balance of the said price in the hands of the trustees. These consist of [specify intended improvements and their cost].

That it is evident that, when the cost of the said improvements already made and the expenses of this application have been met, the cost of the contemplated improvements will exceed the sum remaining in the hands of the trustees by at least the sum of £ , which cost the petitioner reserves power to charge on the said entailed estate.

That the petitioner, as heir of entail in possession foresaid, is desirous of obtaining your Lordships' authority empowering the said [insert names of trustees], as trustees foresaid, to apply the said balance of the price in repayment to him of the foresaid sum of £ already expended on permanent improvements executed as foresaid, and in defraying the expenses of this application and incident thereto, and *pro tanto* the cost of the said contemplated permanent improvements.

For these purposes the petitioner makes the present application to your Lordships in terms of the statutes 11 & 12 Vict. cap. 36, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and relative Acts of Sederunt.

The said trustees are willing that the balance in their hands for investment should be laid out as the petitioner proposes.

The petitioner is of full age, having been born on , and not subject to any legal incapacity. The three nearest heirs of entail who, at the date of presenting this application, are for the time entitled to succeed to the said entailed estate in their order successively immediately after the petitioner, are [specify three next heirs, and whether in minority or pupillarity, and, if so, insert statement that a curator *ad litem* is necessary to be appointed,—it may therefore be proper that a curator *ad litem* be appointed to them].

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, for the appointment of a curator *ad litem* to minor heirs, will then proceed]: and thereafter, on resuming consideration of this petition, and after such inquiry and report as to your Lordships shall seem necessary, and upon your Lordships being satisfied that the procedure under this petition has been regular and in conformity with the provisions

of the said Acts and relative Acts of Sederunt, and of the propriety of the proposed application, to issue a finding or decree to that effect, interponing authority to the proposed transaction, and authorising the said [insert names of trustees], trustees appointed by your Lordships as aforesaid, to pay over to the petitioner out of the said principal sum of £ the sum of £ in repayment to him of the like sum expended by him on improvements of a permanent nature already executed on the said entailed estate, or to pay to the petitioner such other sum as may be ascertained by your Lordships to have been already *bona fide* expended by him as aforesaid, and ordaining the expenses of this application and proceedings to follow hereon to be also paid out of the said sum in the hands of the trustees; further, on being satisfied that the said proposed improvements are of a permanent nature, to interpone authority to the proposed transaction, and to grant warrant to and authorise the said trustees to pay to the petitioner the balance of the said sum in their hands, to be applied by him in payment of the said expenses, and in payment, or payment *pro tanto*, of the cost of the permanent improvements contemplated by the petitioner as aforesaid, reserving always to the petitioner and his representatives right to charge the entailed estate with the cost of such improvements so far as not met by the payments authorised under this application, or to make such orders, and give such directions in the process as your Lordships may think necessary from time to time; or to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.
Appointment of curator *ad litem*, if necessary.
Remit to man of business and man of skill.
Decree in terms of report.

36. Petition for Authority to Constitute Improvement Expenditure to Uplift and Apply, and to Charge Estate.

[Presented under the Acts 11 & 12 Vict. cap. 56, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 63, the Lands Clauses Act, 1845, and relative Acts of Sederunt.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That A. B. is institute of entail in possession of the entailed lands and estate of and others, lying in the county of , under a disposition and deed of entail, made and executed by [specify deed, dates, destination, &c.].

That by the Act 11 & 12 Vict. cap. 36, sec. 26, it is provided [take in section].

That the Railway Company, in virtue of statutory powers, has at different times acquired certain portions of the said lands and estate of for the purposes of their undertaking; and certain sums paid by said railway company for land so taken and for the interest of the petitioner and the heirs of entail therein, after being consigned in bank by the company in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, have been uplifted and invested at the sight of the Court.

That a sum of £ (which was consigned in bank by the said railway company on) was invested in the purchase of £ of Consols in names of the petitioner and [specify trustees then give details of investment].

That a further sum of £ (which was consigned in bank by the said railway company on) was invested in the purchase of [give details of second investment, then insert total amount of entailed money].

That by the Act 38 & 39 Vict. cap. 61, sec. 7, as amended by the Act 45 & 46 Vict. cap. 53, sec. 4, the Court is empowered to authorise the heir of entail in possession of any entailed estate in Scotland to borrow money to defray the cost of improvements on such estate, whether the same have already been executed by him or are in the course of execution, or are merely contemplated at the date of the application.

That by sec. 8 of the said Act 38 & 39 Vict. cap. 61, as amended by sec. 6 (1) of the said Act 45 & 46 Vict. cap. 53, an heir of entail who has obtained the authority of the Court, as aforesaid, to borrow money to defray the cost of improvement expenditure, is authorised to grant either a bond of annual rent for the whole amount thereof, in the terms prescribed by the said section of the said first-mentioned Act, or to grant a bond and disposition in security over the said entailed estate for three-fourths of the said amount.

That the petitioner has between the [specify dates] executed various improvements on the said entailed lands and estate of of the nature contemplated by the said Acts 11 & 12 Vict. cap. 36, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53. These improvements consist of and embrace drainage of the lands and conducting water to houses, enclosing of land, improvements on the mansion-house, and erecting, improving, and making additions to farm-houses and cottages on the estate. The sums expended on the several improvements amount in all to the sum of £ , conform to detailed account of the said expenditure, to be produced in the course of the proceedings to follow hereon. The whole of the said improvements are of a substantial nature, and beneficial to the estate, to the extent not only of the sum proposed to be uplifted, but also to the extent of the sum proposed to be borrowed in respect of the same. The petitioner has not obtained decree under the provisions of the Entail Acts to charge any part of the said expenditure on the said estates.

That the petitioner is of full age, and not subject to any legal incapacity. The three nearest heirs of entail entitled to succeed to the said entailed estate immediately after the petitioner in their order are [specify three next heirs, and if in majority or minority].

That the petitioner desires to uplift and apply in repayment *pro tanto* of the foresaid improvement expenditure the said entailed money, amounting to £ , invested as aforesaid, and to charge the said entailed estate with the balance of the cost of said improvements, so far as not repaid out of said entailed money, including the actual or estimated costs of this application and proceedings therein, and of obtaining the loan, and granting security therefor, all in terms of the said Entail Acts and relative Acts of Sederunt, and he makes the present application to your Lordships accordingly.

That in terms of the 12th section of the said Act 38 & 39 Vict. cap. 61, sub-sec. 5, there will be produced in this application the necessary affidavit or schedule, signed and deponed to by the petitioner, as to the debts and provisions to husbands, widows, or children affecting, or that may be made to affect, the fee of the said entailed estate or the heirs of entail therein.

That by sec. 79 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is enacted that in all cases of moneys deposited in bank under the provisions of that Act it shall be lawful for the Court to order the expenses incurred in, *inter alia*, obtaining the order for payment of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, to be paid by the promoters of the undertaking.

That the present petition is presented in terms of the Entail Acts, and in particular of the Acts 11 & 12 Vict. cap. 36, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53, the said Lands Clauses Consolidation (Scotland) Act, 1845, and the relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven and fourteen days, and, where necessary, for the appointment of a curator *ad litem* to minor heirs, and will then proceed]: and thereafter, upon resuming consideration of the petition, with or without answers, and after such inquiry into the facts before set forth as your Lordships shall judge necessary, to find the procedure to have been regular and proper, and in conformity with the statutes and relative Acts of Sederunt, and to find and declare that the improvements executed by the petitioner on the said entailed lands and estate of , as aforesaid, are of a substantial nature and beneficial to the estate, and such as are contemplated by the said Acts 11 & 12 Vict. cap. 36, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53; and that the said expenditure of £ , or such other sum as may be ascertained by your Lordships to be the sum expended, was *bona fide* expended by the petitioner while he was heir of entail in possession of the said entailed lands and estate on the said improvements, and on being

satisfied of the propriety of the proposed application of the said entailed money invested as aforesaid towards repayment of said improvement expenditure, to pronounce a finding to that effect; and to grant warrant to and authorise the petitioner to uplift the said entailed money invested as aforesaid, and amounting to £ , with the interest due thereon, and to apply the said sum of £ in repayment *pro tanto* of the said improvement expenditure, and to retain said interest for his own proper uses; and to grant warrant to and authorise the petitioner and the said [names of trustees or other persons in whose name the deposits have been made], as trustees foresaid, to transfer said investments to the petitioner absolutely, or to realise the same and pay over the proceeds thereof to the petitioner absolutely on his granting a valid receipt or discharge therefor, in order that the capital of said entailed money may be applied as aforesaid, and the income thereof paid to the petitioner for his own proper uses: And to find the Railway Company liable in the expenses of the present application, in so far as relates to the uplifting and applying of the said entailed money, in terms of the said 79th section of the Lands Clauses Consolidation (Scotland) Act, 1845, and to decern; and with regard to the balance of said expenditure, viz., £ , or such other sum as may be ascertained by your Lordships to be the balance of the sum expended, to grant warrant to and authorise the petitioner, as heir of entail foresaid, to execute in favour of himself, his heirs, executors, and assignees whomsoever, or in favour of any party or parties he may think fit, a bond or bonds of annual rent, in ordinary form, over the said entailed lands and estate of £ , or such other parts and portions thereof as may be considered most suitable by the petitioner, binding himself and his heirs of tailzie in the said lands and estate in their order, to make payment of an annual rent of £ per centum on this said sum of £ , or such other sum as may be ascertained to be the balance of the sum *bona fide* expended by the petitioner in improvements executed, after

deduction of the said sum of £ [insert sum deposited] on the said entailed lands and estate as aforesaid, together with such sum as your Lordships may find to have been the expenses of this application and the proceedings therein, and of obtaining the loan and granting security therefor, and that during the period of twenty-five years from and after the date of your Lordships' decree ascertaining and authorising the same, or during such part of the said period of twenty-five years as may remain unexpired at the date of the said bond or bonds, the said annual rent being payable by equal moieties half-yearly, at the terms of Whitsunday and Martinmas, after the date of said bond or bonds, for the proportion of annual rent then due, with legal interest and penalties in case of failure; or otherwise, in the option of the petitioner, to grant warrant to and authorise him to execute in favour of himself, his heirs, executors, and assignees whomsoever, or in favour of any party or parties who may advance the amount, a bond and disposition in security, or bonds and dispositions in security, in ordinary form, over the said entailed lands and estate of , or such parts and portions thereof as may be considered most suitable by the petitioner, other than the mansion-house, offices, and policies, for three-fourth parts of the said balance of expenditure on improvements, and of said sum of expenses, to be ascertained as aforesaid, on which the amount of the said bond or bonds of annual rent, if granted, would be calculated, with the due and legal interest thereon (or at the rate of five pounds per centum per annum) from the date of such advance until repaid, and with corresponding penalties if incurred; such bond and disposition in security, or bonds and dispositions in security, being in ordinary form binding the petitioner and his heirs of entail, in their order successively, to repay the principal sum therein, with interest and penalties, and containing all clauses usual in bonds and dispositions in security granted over estates in Scotland held in fee simple, all in terms of, and agreeably to, the provisions of the said Acts 38 & 39 Vict. cap. 61, and 45 & 46

Vict. cap. 53; and to pronounce such other order or orders, and to do further or otherwise in the premises as may appear to your Lordships to be necessary for carrying the present application fully into effect, and proper and consistent with the said Acts and relative Acts of Sederunt.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, remit to man of business and man of skill, and appointment of curator *ad litem* if necessary.

Decree in terms of report by man of business, and remit to him to see money uplifted and draft bond executed and recorded.

Decree in terms of second report by man of business.

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37. PETITION TO UPLIFT ENTAILED MONEY CONSIGNED UNDER LANDS CLAUSES ACT, INVEST IN HERITABLE SECURITY, AND APPLY PART OF BALANCE IN REPAYMENT OF IMPROVEMENT EXPENDITURE.

[Presented under 8 & 9 Vict. cap. 19, 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, 45 & 46 Vict. cap. 53.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner is heir of entail in possession of the entailed lands and barony of and other lands in the county of , particularly described in the disposition and deed of entail granted by [design] to and in favour of [state destination] dated the [date of recording].

That the petitioner is infeft in the said entailed lands and barony [state infeftment].

That have, in exercise of the powers of the

Lands Clauses Acts, taken certain portions of the said entailed lands and estates, extending to imperial measure or thereby, specified in the nomination of valuators executed by the said and the petitioner, dated , and that the purchase money and compensation payable therefor has been fixed by valuation and declaration, dated , pronounced by and , the valuators nominated respectively for the said , and the petitioner, at the sum of £ .

That the said sum of £ will be duly consigned in bank by the said in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, to be subject to the control and disposition of your Lordships, and the consignation receipt will be produced.

That by the Lands Clauses Consolidation (Scotland) Act, 1845, it is enacted (sec. 67) that [take in section].

That by sec. 68 of the said Lands Clauses Consolidation (Scotland) Act, 1845, it is enacted that [take in section].

That by sec. 26 of the Act 11 & 12 Vict. cap. 36, intituled "An Act for the Amendment of the Law of Entail in Scotland," it is enacted that [take in section].

That the petitioner desires authority to invest part of the said sum, amounting to £ , at the sight of your Lordships in heritable security in terms of the foresaid 68th section of the said Lands Clauses Consolidation (Scotland) Act, 1845.

That it is proposed that the title to the said heritable security should be taken in the names of [state names of trustees] or of such other person or persons as may be approved of by your Lordships, as trustees for the petitioner and the heirs of entail succeeding to him.

That the petitioner as heir of entail in possession of the said estates, and as the party who would for the time have been entitled to the rents and profits of the said lands, has right to the whole interest which shall become due upon the said sum, and the petitioner and his heirs of entail who may succeed him for the time in the possession of the said entailed estates will have right to the whole interest which shall, during their respective lifetimes, become payable upon the said investment, so long as the same may subsist. The petitioner is therefore desirous of obtaining from your Lordships an order for the payment of the interest on said investment to

him and his heirs of entail during their respective lifetimes, for his or their own use and behoof.

That by interlocutor of your Lordships, dated , pronounced in a petition at the instance of the present petitioner, it was found that the petitioner was entitled to charge the said entailed estates with the sum of £ , expended on permanent improvements, and the said interlocutor granted him authority to uplift the principal sum of £ contained in the consignation receipt mentioned in the said petition, and to apply the same in repayment *pro tanto* of the said expenditure, and reserved the present petitioner's right to charge the said entailed estates with the sum of £ , being the balance of the said expenditure, or to obtain payment thereof from any moneys which might be thereafter consigned. The said balance of £ still remains due to the petitioner.

That the petitioner proposes, with the approbation of your Lordships, to repay himself the foresaid balance of £ of expenditure on permanent improvements on said entailed estates out of the balance remaining from the consigned sum of £ after making the proposed investment of £ , the balance of £ remaining in bank.

That the petitioner is of full age, and subject to no legal incapacity. He was born on . That the three nearest heirs of entail for the time entitled to succeed to the said entailed estates immediately after the petitioner in their order successively are—(1) [design], (2) [design], and (3) [design], all children of and residing with the petitioner at .

That the said are all in minority, and the petitioner is their legal guardian.

That the petitioner makes the present application to your Lordships under and in terms of the Acts of Parliament 8 & 9 Vict. cap. 19, 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, for the appointment of a curator *ad litem* to minors, and will then proceed]: and upon resuming consideration hereof, with or without answers, and after such

inquiry as to your Lordships shall seem necessary, to approve of the investment of the said sum of £ on heritable security in the names of the said [names of trustees], to authorise and direct the petitioner to uplift out of the foresaid consigned sum of £ the sum of £ , together with the interest accrued on the said sum of £ , and to invest the said sum of £ on heritable security as aforesaid; and to authorise and ordain the interest which shall become due on the said sum of £ , when invested as aforesaid, to be paid to the petitioner, or to the heir of entail in possession of said entailed estates for the time as the same falls due; and further, to authorise the petitioner to repay himself the foresaid balance of £ of expenditure on permanent improvements on said entailed estates, already found to be chargeable thereon, out of the balance of said consigned sum of £ , after making the proposed investment of £ , and to find the said [party consigning money] liable in the expenses attending the investment of the said sum of £ and incident thereto, including the expenses of this application, and of the procedure under the same, reserving to the petitioner his claim against the said [name of party consigning] for the expenses of or incident to any future investment or other disposal of the said sums of £ and £ which your Lordships may authorise; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

Appointment of curator *ad litem*.

Remit to man of business.

Decree in terms of report by man of business, and remit to him to see the necessary deeds relating to investment executed and recorded, and deed of acknowledgment and discharge regarding the sum applied in repayment of improvement expenditure also executed and recorded.

Decree in terms of second report by man of business.

38. Petition for Authority to Sell Stock to Repay Estate and Settlement Estate Duties.

[Presented under the following statutes:—38 & 39 Vict. cap. 61, and relative Acts of Sederunt, 57 & 58 Vict. cap. 30 (The Finance Act, 1894). In this case the petitioner's father had executed simultaneously a trust disposition and conveyance and deed of directions as to purchase and entail of real estate contiguous to estates conveyed by the said trust disposition and settlement.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the late C. D., of , residing at , in the parish of , by trust disposition and settlement, dated and recorded in the books of Council and Session, disponed his whole heritable and moveable estate, including the lands of , to [here give the names of trustees], for the purposes specified in a deed of directions executed by him of even date therewith, and recorded along with it. By the third purpose of the said deed of directions he directed and appointed his trustees, "after fully accomplishing the foregoing pur-"poses" (the payment of debts and legacies), "to realise "and convert into money the whole of my remaining "means and estate other than and except the lands of " and others specially described in my "said trust disposition and settlement, and to hold the same, "and the annual produce thereof, under deduction of the "necessary charges and expenses connected with the managing, "investing, or collecting thereof, or other charges properly "attributable thereto, for the period of at least ten years after "my death; and on the expiry of such period, or so soon "thereafter as a favourable opportunity shall occur, but at "furthest within twenty-one years after my death, to invest "the accumulated amount in the purchase of lands (including "therein, at the discretion of my trustees, the *dominium* "*directum* of such lands as they may happen to acquire in "property where such *dominium directum* is held separately),

"situated as contiguous and convenient as may be to my said "lands of , and in the county of , and "failing either within fifteen years, then in any other county in "Scotland, and to take the title of such purchase or purchases, "if more than one, in their own favour as trustees for the "purposes hereof; declaring that within the limits hereby "expressed, my trustees shall be the sole judges of the proper "time for purchasing such lands and of the eligibility for the "purposes of the trust of any lands which may be offered for "sale." By the fifth purpose of the said deed of directions, it is provided that "my trustees shall thereafter" (*i.e.*, after the purchase of such lands), "and as soon as conveniently can be "done, execute a valid and effectual strict entail or disposition "and deed of strict entail of the said lands of and "others, particularly described in my said trust disposition and "settlement, as also of the whole lands and other heritages "which shall be purchased by my trustees as aforesaid, all which "lands shall therein and in all time thereafter be styled the "estate of , and that to and in favour of the "following persons and series of heirs" [here insert destination]. "The said deed of entail is to contain all the usual conditions, "provisions, restrictions, prohibitions, and limitations, and "clauses, irritant and resolutive, applicable thereto, and all "other clauses and fetters necessary for the making a valid "and effectual strict entail according to the law of Scotland, "and for binding the institute or person in whose favour the "same is directly granted as well as the heirs of entail." By codicil recorded along with the said trust disposition and settlement and deed of directions, the said C. D. cancelled the direction to his trustees to accumulate the interest on his trust funds, and in place thereof, desired that they pay the same to the said E. F. along with the rents of .

That the said C. D. died on , and his trustees entered into possession of his heritable and moveable estate, made up titles in their names as trustees to the said lands of , and executed a deed of entail thereof in favour of the said G. H. and the other heirs of entail pointed out by the said deed of directions.

That the said G. H., then institute of entail in possession of the said lands of , presented a petition to your Lordships on , founding, *inter alia*, upon the 23rd, 26th, and 28th sections of the Entail (Scotland) Act, 1882 (45

& 46 Vict. cap. 53). By said sec. 26 it is enacted [take in section]. The petition set forth that, "by desire of the "petitioner, no purchase of lands has been made in terms of "the deed of directions. The twenty-one years within which "the trustees are directed to make the purchase will expire on " . The petitioner, the said G. H., is averse at "present to the purchase, and would prefer that the trust be "carried on as heretofore, and the moveable estate, so far as "invested, kept in its present investments," and prayed your Lordships "to grant warrant to and authorise the said" [insert names], "the surviving trustees acting under the trust disposi-"tion and settlement and deed of directions, and the survivors "and survivor of them, and such person or persons as may be "assumed by them into the trust, to invest the balance of "uninvested capital, after paying the expenses of this applica-"tion, in the purchase of such stock as your Lordships may "approve, and to hold the capital of the same when invested, "and of the present investments of the said trust estate, or "such part thereof, and such others as your Lordships may "appoint to be substituted for any part of the same under "deduction of the necessary charges and expenses connected "with the managing or investing thereof, or other charges "properly attributable to said capital, for behoof of the persons "and series of heirs set forth in said deed of directions, and to "pay the annual income thereof to the petitioner, and on his "death to the said persons and series of heirs in the order in "which, were the purchase and entail completed, they would "be entitled to succeed to the entailed lands successively "immediately after him, and that until such purchase and "entail is completed, or until such time as your Lordships may "hereafter determine under deduction of said charges and "expenses, so far as the same are properly attributable to "income, and of the charges and expenses of collecting said "income." On [fill in date], Lord , Ordinary, pronounced an interlocutor granting the prayer of the said petition. The portion of the trust estate still held by the trustees is therefore held by them as the price of entailed land sold.

That the said G. H. died on the and Lord , Ordinary, on , sisted the petitioner in room and place of the deceased G. H., and on pronounced an interlocutor nominating and appointing [insert]

to be additional trustees to act along with the said [insert names of surviving trustees] and the petitioner under the said trust disposition and settlement.

That the petitioner is the person who would be the heir of entail in possession if the said purchase and entail were completed.

That by the 9th section of the Finance Act, 1894 (57 & 58 Vict. cap. 30), sub-sec. 5, it is enacted [take in sec. 9, sub-sec. 5].

By the 23rd section of said Act, sub-sec. 18, it is enacted [take in sec. 23, sub-sec. 18].

That the petitioner estimates the estate duty and settlement estate duty in terms of the said Finance Act, 1894, payable by him on the death of the said G. H. with reference to the said portion of said trust estate held by the said trustees as the price of entailed land sold, will amount to £ .

That the petitioner is desirous of availing himself of the provisions of the said Finance Act, 1894, by receiving from the said trustees of the said C. D., out of the investments held by them as aforesaid, the amount of the said estate duty and settlement estate duty which falls to be paid by him as aforesaid.

That the petitioner is of full age, and subject to no legal incapacity.

That the three persons who, if the directions of the truster, the said C. D., to purchase and entail were carried out, would be the three nearest heirs of entail entitled at that time to succeed to the entailed lands in their order successively immediately after the petitioner are [insert three heirs, and specify whether they are all of full age or in minority].

No special form of procedure is provided by the said Finance Act, 1894, but the petitioner submits that the procedure should properly be analagous to that provided by the Entail Acts, and particularly by the Act 38 & 39 Vict. cap. 61, sec. 12, and by the relative Acts of Sederunt.

[The prayer will be for intimation, advertisement, and service of seven days if within Scotland, and fourteen days if furth thereof, and, if necessary, for the appointment of a curator *ad litem* to minor heirs, and will then proceed]: and after intimation, advertisement, and service, in

terms of your Lordships' appointment, and such other procedure as your Lordships may direct, with or without answers, to grant warrant to and authorise the said [insert names of trustees], as trustees acting under the said trust disposition and settlement and deed of directions, to sell such portion of the investments held by them as may be necessary to pay the said estate duty and settlement estate duty and the expenses of this application, and to apply the proceeds thereof in paying the same, and to decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

Remit to man of business, and appointment of curator *ad litem*, if necessary.

Decree in terms of report by man of business.

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39. PETITION FOR AUTHORITY TO CHARGE ESTATE DUTY AND SETTLEMENT ESTATE DUTY.

[Presented under the Finance Act, 1894 (57 & 58 Vict. cap. 30, sec. 9, sub-secs. 5 and 6), and the Entail Amendment Act, 1868 (31 & 32 Vict. cap. 84, sec. 11). This is a case where the deed of entail contained reserved power, notwithstanding prohibitory clauses, to heirs of entail to provide suitable liferents by way of locality to husbands and wives, not exceeding one-half of the estate for the time.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is the heir of entail in possession of the entailed lands, barony, and estate of and others, in the parishes of , and county of , under and by virtue of a disposition and deed of tailzie

executed by the deceased C. D. [here describe deed of entail, destination, &c., in full], whom failing, to the other heirs substitute therein set forth, which disposition and deed of tailzie reserved power to the heirs of entail, notwithstanding of the prohibitory clauses therein contained, to provide their husbands and wives in suitable liferents by way of locality, not exceeding the one-half of the estate for the time.

The petitioner is duly infeft in the said lands, barony, and others, conform to [here specify service and other titles, if any].

The petitioner is of full age, and not subject to any legal incapacity. He was born in [state year of birth].

The three heirs of entail, who, at the date of presenting this application, are for the time entitled to succeed to the said entailed estates in their order successively immediately after the petitioner are [here specify also date of birth of three next heirs, and if any are major, and which of them are in minority].

By bond of locality, dated the day of , E. F., then heir of entail in possession of said entailed lands, barony, and estate of and others, in virtue of the power reserved to the heirs of entail by the said disposition and deed of tailzie, bound and obliged himself and his heirs male and of tailzie succeeding to him in the said lands and estate, upon their own proper charges and expenses, to infeft and seise Mrs. G. H., his spouse, in liferent during all the days of her life after his decease in case she should happen to survive him, but always with and under the burdens and provisions particularly hereinafter specified in certain portions of the said entailed lands, barony, and estate of and others, viz.:—[here specify lands].

Upon his succession to the said lands, liferented in virtue of the foresaid bond of locality, on the death on of the said Mrs. G. H., the petitioner paid the estate duty and the settlement estate duty exigible in terms of the Finance Act, 1894, upon the value thereof. The said estate duty, at the rate of per cent., amounted to £ and the settlement estate duty, at per cent., amounted to £ . The said duties amount in all to £

By the said Finance Act, 1894, 57 & 58 Vict. cap. 30, it is, *inter alia*, enacted, sec. 9, sub-secs. 5 and 6, as follows:—[take in sections].

The petitioner further founds upon sec. 9 of the Entail Amendment Act of 1853, 16 & 17 Vict. cap. 94, and sec. 11 of the Entail Amendment Act of 1868, 31 & 32 Vict. cap. 84.

The petitioner now proposes to charge the said portions of the said entailed estate with the said duty and settlement estate duty, by granting a bond and disposition in security, or bonds and dispositions in security, in ordinary form over the same, and for that purpose makes the present application to your Lordships.

[The prayer will be for intimation, advertisement, and service on an induciæ of seven and fourteen days, and, if necessary, for appointment of a curator *ad litem* to minors and pupils, and will then proceed]: and on resuming consideration of this application, with or without answers, and after such inquiry, if any, as to your Lordships shall seem necessary, to interpone authority to the proposed transaction, and to grant warrant to and authorise the petitioner to execute a bond and disposition in security, or bonds and dispositions in security, in ordinary form over the said portions of the said entailed estate, and that for the said sum of £ , and that either in favour of himself as an individual or of such other person or persons as may advance the said sums to him, such bond and disposition in security, or bonds and dispositions in security, binding the petitioner and the heirs of entail in their order successively in the said entailed estate to repay the said sums, with interest and penalties; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ remit to man of business and appoint curator *ad litem*, if necessary.

Decree in terms of report.

40. Petition for Authority to Charge Entailed Estates with Estate Duty, Settlement Estate Duty, and Children's Provisions.

[Presented under 5 Geo. IV. cap. 87, 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, and the Finance Act, 1894 (57 & 58 Vict. cap. 30, sec. 9, sub-secs. 5 and 6), and relative Acts of Sederunt. In this petition there was a bond of provision for a sum in favour of the wife of the heir in possession. This bond was divided into two sums, and secured in separate moieties over two separate entail properties. There was also a bond of provision for younger children.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is heir of entail in possession of the lands and estate of [here state deeds, entail, lands, and destination therein contained].

That the petitioner succeeded to the said properties on [date of succession], on the death of his [state name of last heir and his relationship to petitioner], and he is now infeft in [here narrate services under which the petitioner has made up his title].

That upon the succession of the petitioner to the said properties he paid the estate duty and the settlement estate duty which became exigible in terms of the Finance Act, 1894, upon the value thereof. The estate duty (at the rate of per cent.) amounted to £ , and the settlement estate duty (at per cent.) amounted to £ . These duties together amounted to £ .

That by the Finance Act, 1894 (57 & 58 Vict. cap. 30), it is, *inter alia*, enacted (sec. 9, sub-secs. 5 and 6) that [take in]. The petitioner further founds upon sec. 9 of the Entail Amendment Act of 1853 (16 & 17 Vict. cap. 94), and sec. 11 of the Entail Amendment Act of 1868 (31 & 32 Vict. cap. 84), as well as upon the Finance Act, as authorising the said estate duty and settlement estate duty paid by him to be charged upon the said entailed properties.

That by bond of annuity dated the , and recorded in the Division of the General Register of Sasines applicable to the county of , and by memorandum in the Division of the said Register applicable to the county of on the , the said [fill in name of last heir], the heir of entail then in possession of the said properties, in exercise of the powers conferred by the Act 5 Geo. IV. cap. 87, intituled "An Act to authorise the Proprietors of Entailed Estates in Scotland to grant Provisions to the Wives or Husbands and Children of such Proprietors," and subsequent entail statutes, provided and disponed to his wife [fill in name of spouse], in liferent during all the days of her life after his decease, in case she should survive him, a free liferent annuity or jointure of £ , or such other sum not exceeding that amount as should not exceed one-third part of the free yearly rents of the said entailed properties in so far as the same should be let, and of the free yearly value thereof so far as the same should not be let, after making the deductions specified in the said Act 5 Geo. IV. cap. 87, all as the same might happen to be at his death, to be uplifted and taken at the terms specified in the said bond of annuity, with interest and penalty as therein mentioned, to the extent of £ furth of the first-mentioned property, and to the extent of £ furth of the second-mentioned property, or furth of any part or portion of the said properties, other than the mansion-houses, offices, and policies thereof.

That by bond of provision dated , the said [state name of last heir], on the narrative that he was heir of entail infeft and in possession of the said properties, and that he was desirous of granting suitable provisions to his children thereinafter named, or their representatives, in virtue of the said Act 5 Geo. IV. cap. 87, and of subsequent entail statutes, *inter alia*, bound himself and the heirs of entail succeeding to the foresaid properties, and *subsidiarie* his heirs, executors, and successors whomsoever, to pay to his children [fill in names of children] not succeeding to the said entailed properties, if they should be alive at the time of his death, the sum of £ equally between them, payable one year after his death, with interest and penalty as therein specified, and he declared that the provisions were granted by him under all the conditions and provisions, and subject to all

the restrictions, limitations, and declarations contained in the said statutes.

That the said deceased [fill in name of last heir in possession and date of his demise]. He was survived by his widow, the said , and by children, viz.:—[state ages of younger children, and when provisions under bond are payable]. The petitioner proposes, with the authority of your Lordships, to charge these provisions on the fee of the said entailed properties. It will be seen from the statement appended hereto that the widow's jointure and younger children's provisions are both within the limit authorised to be provided by the said Act 5 Geo. IV. cap. 87.

That the petitioner is desirous to obtain the authority of your Lordships to charge the said entailed properties, other than the mansion-houses, offices, and policies thereof, in terms of the Entail Acts, with the said estate duty and settlement estate duty, amounting together as aforesaid to the sum of £ , and with the said provisions to younger children, amounting to the sum of £ , and that by granting a bond and disposition in security, or bonds and dispositions in security, therefor, and he accordingly makes the present application to your Lordships for that purpose.

That the three nearest heirs of entail who at the date of presenting this application are entitled to succeed to the said entailed properties in their order successively immediately after the petitioner are his three sons [specify three next heirs, and if major or in pupillarity or in minority].

That the petitioner makes the present application to your Lordships under and in terms of the Acts 5 Geo. IV. cap. 87, 11 & 12 Vict. cap. 36, 16 & 17 Vict. cap. 94, 31 & 32 Vict. cap. 84, 38 & 39 Vict. cap. 61, and 45 & 46 Vict. cap. 53, and relative Acts of Sederunt, and also the said Finance Act, 1894.

[The prayer will be for intimation, advertisement, and service on inducie of seven and fourteen days, and if necessary, for appointment of curator *ad litem*, and will then proceed]: and thereafter, on resuming consideration of this petition, with or without answers, and after such inquiry into the facts as your Lordships shall judge necessary, to find that the procedure under this application has been regular and proper and in conformity with the provisions of the

statutes and relative Acts of Sederunt; to find and declare that the foresaid jointure of £ , granted by the said deceased [insert name of granter of jointure] in favour of the said [insert name of wife] and the foresaid provisions of £ granted by him in favour of the said [insert names of younger children], are within the limits prescribed by the said Act 5 Geo. IV. cap. 87; and to grant warrant to and authorise the petitioner to charge the fee and rents of the said entailed properties, other than as aforesaid, by a bond and disposition in security, or bonds and dispositions in security, with the said estate duty and settlement estate duty, amounting together to £ , and with the said provisions of £ , and interest thereon at a rate to be stated in such bond or bonds, and corresponding penalties, such bond or bonds containing a power of sale, and all other clauses usual in bonds and dispositions in security granted over estates in Scotland held in fee simple, and to decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

A statement of the yearly rent or value of the lands and estates of , and on the death of , late heir of entail in possession of the same, and the amounts of the jointure and provisions due to his widow, , and his [insert names of younger children] under bond of annuity and bond of provision, both granted by him.

[Here give particulars of rental, less annual burdens, feu-duties, &c.]

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, remit to man of business and appointment of curator *ad litem*, if necessary.

Decree in terms of report, and remit to man of business to revise draft and see same executed and recorded.

Decree in terms of second report by man of business.

41. Petition by Trustees of Deceased Heir of Entail (with Consent of Present Heir) for an Order under Finance Act to Grant Bonds and Dispositions in Security.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. and others [*design*], trustees of C. D. [*design*],

Humbly sheweth—

That the said deceased C. D., who died on this date [date], was at said date institute or heir of entail in possession of the lands, baronies, and others after mentioned, under and in virtue of the following deeds of entail, viz.:—[specify deeds of entail, destinations, and infeftments].

E. F. [design] died of this date [date], and the said C. D. succeeded as heir of entail next called in the order of succession to him to the whole of the said lands, baronies, and others.

In respect of the passing of the said lands, baronies, and others to the said C. D. on the death of the said E. F., estate duty at the appropriate rates became exigible in terms of the Finance Act, 1894, upon the principal value of the said entailed lands, baronies, and others. As the said C. D. was not entitled to disentail any of the said lands, baronies, and others without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, settlement estate duty (which by sec. 5, sub-sec. (*a*), is a further estate duty), at the rate of one per cent. also became exigible in terms of sec. 23, sub-sec. 16, of said Act.

The said C. D. exercised the option conferred upon him by sec. 6, sub-sec. 8, of the said Act to pay the said estate duties and settlement estate duties by sixteen half-yearly instalments. At the date of his death he had paid eleven of said instalments, leaving five instalments unpaid.

By his said will the said C. D. conveyed to the petitioners, as trustees for the purposes therein mentioned, his whole estate, heritable and moveable (with certain exceptions therein specified), and, *inter alia*, directed the petitioners, as trustees foresaid, in the event of there being due at the time of his death any estate or settlement estate duties, which became

payable on the passing to him of said entailed lands, baronies, and others, to pay said unpaid duties, and to apply to the Court of Session for an order or orders ordaining the heir of entail who should succeed to him in said lands, baronies, and others to grant bonds and dispositions in security in their favour for the amount of said unpaid duties paid by them. An extract of said will is produced herewith.

In terms of said direction in said will, the petitioners, as trustees foresaid, on or about this date [insert date in margin], paid some five remaining instalments of the said estate duties and settlement estate duties. Certificates granted by the Inland Revenue, in terms of sec. 9, sub-secs. 2 and 3, of said Act, of payment of these instalments of said duties are produced herewith. The amounts of the said instalments of said estate duties and settlement estate duties paid by the petitioners in respect of the passing to the said C. D., of said several lands, baronies, and others, are as follows, viz.:—

Estate.	Estate Duty.	Settlement Estate Duty.	Total.
Description of Lands.	£ [amount].	£ [amount].	£ [amount].

By sec. 9, sub-sec. 5, of the said Finance Act, 1894, it is enacted that "a person authorised or required to pay the estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty, and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of, or a terminable charge on, that property, or any part thereof."

And by sec. 23, sub-sec. 18, of the said Act, it is, *inter alia*, enacted that "where any person who pays estate duty on any property, and in whom the property is not vested, is, by this Act, authorised to raise such duty by the sale or mortgage of that property, or any part thereof, it shall be competent for such person to apply to the Court of Session (*a*) for an order of sale . . . or (*b*) for an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the estate duty. . . ."

In terms of the said direction in the said will of the said C. D., and in virtue of the provisions above referred to of said Finance Act, the petitioners now desire to obtain an order

or orders ordaining the heir of entail who has succeeded to the said C. D. in the said lands, baronies, and others, and in whom the same is vested, to grant bonds and dispositions in security for the amount of the said five instalments of estate and settlement estate duties remaining unpaid at the death of the said C. D., over the said lands, baronies, and others respectively and for that purpose make the present application to your Lordships.

The heir of entail who has succeeded to the said C. D. in the said lands, baronies, and others, and in whom the same are vested, is his brother, G. H. [design], who concurs in the present application. He is of full age, and not subject to any legal incapacity.

The three next heirs entitled to succeed to the said lands, baronies, and others, in their order successively after the said G. H., are—[name and design, and state whether in pupillarity or minority].

[The prayer will be for intimation, advertisement, and service on an induciæ of seven and fourteen days, and for the appointment of a tutor *ad litem* or curator *ad litem*, if necessary, and will then proceed]: and on resuming consideration of this application, with or without answers, and after such inquiry, if any, as to your Lordships shall seem necessary, to grant an order ordaining the said G. H., as heir of entail foresaid, to grant in favour of the petitioners, as trustees foresaid, the following bonds and dispositions in security (in ordinary form, containing powers of sale and all other usual and necessary clauses), viz.:—(1) a bond and disposition in security for £ over the said entailed lands, lordship, and earldom of and others [fill in amount of estate duty and settlement estate duty and the names of the lands over which bonds are to be granted]—such bonds and dispositions in security binding the said G. H., as heir of entail foresaid, and the heirs of entail succeeding to him in their order successively in the said respective entailed lands, baronies, and others, to repay to the petitioners, as trustees foresaid, or the survivors and survivor, or their, his, or her successors in office, or assignees

whomsoever, the said several sums, with interest at five per centum per annum from the date of said several bonds and dispositions in security, and corresponding penalties; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation, advertisement, and service.

On expiry of induciæ, appointment of tutor *ad litem* or curator *ad litem*, if necessary, and remit to man of business.

Decree in terms of report by man of business, and remit to him to see bonds executed and recorded.

Decree in terms of second report by man of business.

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42. PETITION BY THE TRUSTEE ON THE SEQUESTRATED ESTATES OF AN HEIR OF ENTAIL FOR AUTHORITY TO COMPLETE TITLE TO *Acquirenda*.

Division.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B., C.A., Edinburgh, trustee on the sequestrated estates of C. D. [*design*],

Humbly sheweth—

That the estates of the said C. D. were on sequestrated by your Lordship, in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, and after the usual steps of procedure the petitioner was duly confirmed as trustee on said estates.

That the petitioner entered into possession of the bankrupt's estate, and realised the same so far as he has been able to do so.

That owing to the death on of E. F. [design], father of the said C. D., the latter, as his eldest son, has succeeded to the entailed estates of and others, in the county of , as heir of tailzie and provision

under a disposition and deed of entail or bond of tailzie granted by [design], dated the , and recorded in the Register of Tailzies on the .

That the present application is made in terms of the 103rd section of the Bankruptcy (Scotland) Act, 1856.

May it therefore please your Lordship to appoint intimation of this petition to be made in the *Edinburgh Gazette*, and to appoint all concerned to appear within such time as your Lordship may fix for their interest, and on the expiration of such time, and no cause being shewn to the contrary, to declare all right and interest in the said entailed estate to which the said C. D. became entitled as aforesaid to be vested in the petitioner as trustee foresaid, as from the date of the succession thereto of the said C. D., in terms of the said Act, but so that the right vested in the petitioner shall in no way affect the fee of the said entailed estate so long as the same shall remain entailed, except in so far as the same may be consistent with the deed of entail and consistent with the rights therein of the said C. D. as heir of entail and the petitioner as trustee foresaid, so that the right to be granted to the petitioner, or any process, diligence, and execution to follow thereon, may not infer against the said C. D. a contravention of the said disposition and deed of entail or bond of tailzie, and in the event of any party opposing the prayer, to find the petitioner entitled to the expenses of this application and proceedings had thereon; or to do otherwise in the premises as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Agent or Counsel.]

PROCEDURE.

Advertisement in *Edinburgh Gazette* and service on bankrupt.

On expiry of induciæ, remit to man of business.

Decree in terms of a report granting prayer of petition.

Points in Entail Petitions.

1. For procedure in these petitions, reference is specially made to sec. 12 of the Entail Amendment Act, 1875 (38 & 39 Vict. cap. 61).

2. The petition must be printed and boxed to the Court. The prints should be marked "Junior Lord Ordinary," whose office is also in the Bill Chamber. When the petition appears in the roll of first enrolments, the first order will be for intimation and advertisement, and service.

3. In all entail petitions (with the exception of a petition to record a deed of entail), it is the practice to call the three next heirs as respondents, and to obtain an order for service of the petition on them.

4. *Intimation.*—Intimation on the walls is made by the agent by writing a copy of the deliverance on a print of the petition with a one shilling law court stamp affixed thereto, and handing the same to the hallkeeper at the Parliament House. Intimation in the minute book is made by the Clerk of Court.

5. *Advertisement.*—Advertisement of the petition is ordered once in the *Edinburgh Gazette* and once in a paper circulating in the county or counties where the entailed estate or the part thereof dealt with in the application is situated.

6. It is sufficient in the advertisements to state the leading name by which the lands are commonly known, without any detailed description thereof, and the leading purpose of the application, without any detailed statement of such purpose (sec. 12, sub-sec. 4, Entail Amendment Act, 1875).

The following is a common form of advertisement:—

Intimation is hereby given, that A. B., heir of entail in possession of the entailed lands and estate of , in the county of , has presented a petition to the Lords of Council and Session (Division, Junior Lord Ordinary, Mr. , clerk), in terms of the Acts [specify Acts under which petition is presented, and relative Acts of Sederunt] for authority to [state purpose of application shortly]. Date of interlocutor ordering intimation day of , 19 .

C. D.,
Agent of the Petitioner.

Address and date.

7. *Service.*—A certified copy of the interlocutor, written on a print of the petition, is the warrant for service.

8. When service of the petition and deliverance is accepted by an agent on behalf of the respondents, the acceptance must be by an Edinburgh agent.

9. On the expiry of the inducia of intimation, advertisement, and service, the print of the petition and deliverance certified by the clerk should be returned to the clerk, having annexed the acceptances or execution of service [as the case may be]. The petitioner's agent also requires to grant a certificate to the effect that the petition has been intimated, advertised, and served as ordered, and that the inducia have expired. This certificate is generally granted by the petitioner's agent's clerk.

10. This certificate may be in the following terms:—

I, , hereby certify that the foregoing petition, with deliverance thereon, has been duly intimated on the walls and in the minute book in common form, advertised conform to the advertisements herewith produced, and served upon all the respondents conform to the foregoing acceptances [or execution] of service [as the case may be], that the inducia have expired, and that no answers have been lodged.

[Signed and dated.]

11. In practice, it is usual to lodge the newspapers containing the advertisements in process, but it is sufficient if cuttings from the newspapers are produced, with a certificate that they appeared in the papers of the date the certificate bears. It is understood, however, that reporters generally call for production of the newspapers themselves on taking up the remit. When answers are lodged to a petition, the petition and answers may be either sent to the roll for hearing, or remitted to the man of business to deal with them in his report, and to be discussed before the Lord Ordinary when the report comes before him.

12. When no answers are lodged the petition should, on the expiry of the inducia, be enrolled for the next order.

13. If necessary the next order will be for appointment of a tutor or curator *ad litem* to the pupil or minor respondents, and for a remit to a man of business, and (according to the nature of the application), a remit to a man of skill.

14. In petitions for disentail where there are two or three

minor heirs whose consents are required, a separate curator *ad litem* must be appointed to each.

15. The tutor or curator *ad litem* on his appointment attends before the Lord Ordinary and takes the declaration *de fideli administratione officii.*

16. The following may be taken as examples of applications in which it will be necessary to ask for a remit to a man of skill:—

17. Petitions to disentail, charge with debt (where consents are required and not given, in which case it will also be necessary to remit to an actuary to ascertain the value in money of the expectancies or interests in the entailed estate of the parties withholding their consent), also in petitions to sell, feu, lease, charge with improvement expenditure.

18. Before obtaining the foregoing remit, the agent should have lodged in process the deed of entail, service, &c., and any other titles or documents which are referred to in the petition. He should also at same time lodge the affidavit or schedule as to debts which is requisite in all applications to disentail an estate, in whole or in part, or to sell, alienate, dispone, charge with debts or incumbrances, lease, feu, or excamb (Entail Amendment Act, 1895, sec. 12, sub-sec. 5), and a certificate by himself certifying the facts stated in the petition regarding the petitioner and the three next heirs.

19. The whole process (with the exception of the principal petition, interlocutor sheet, inventory of process, and inventories of productions, which are not allowed to be borrowed up except when it is necessary to write an amendment to the principal petition) should then be borrowed up and sent to the reporter.

20. The curator *ad litem* is by the interlocutor appointing him to the office allowed to see the process. After examination he lodges a minute, with any remarks he may have to make on behalf of his ward at this stage of the proceedings.

21. The man of skill, and, where necessary, the actuary, are by the terms of the remit from the Lord Ordinary usually recommended to communicate with the man of business before completing their respective reports.

22. After remit there is no further procedure before the Court until the petition comes before the Lord Ordinary upon the report by the man of business (generally for decree in terms of the report). Before, however, the petition is enrolled

for this purpose, the report by the man of business or the draft should be submitted to the curator *ad litem*, who lodges another minute in process with such remarks as he may have to make.

23. The whole process borrowed should then be returned to the clerk, and the reports and minute lodged in process. The reports and minute should be borrowed up and sent to the Lord Ordinary by the agent the night before the petition is in the roll.

24. When there are no difficulties raised by the reporter, decree follows as a matter of course in terms of the interlocutor, which in all such applications is suggested by the man of business in his report.

25. When any difficulties are raised, these will fall to be discussed before the Lord Ordinary.

26. Whether the proceedings are at an end upon decree being pronounced, in terms of the report by the man of business, depends upon the circumstances of each application.

27. When the interlocutor is final, the process can be transmitted to the extractor for extract on the expiry of eight days from the date of the interlocutor.

28. In cases of urgency, the reading of the decree in the minute book will be dispensed with on cause shewn. This enables the process to be transmitted immediately the Clerk has entered the decree in the minute book of Court.

29. When the interlocutor is not final, as, for instance, when certain matters are to be carried out, or certain deeds to be adjusted, executed, and recorded at the sight of the man of business, these are specified in the interlocutor granting decree, and a remit made to the reporter to see them carried out.

30. On the final remit to the man of business being carried out to his satisfaction, he lodges a second report in process. The petition should then be enrolled and decree granted in terms thereof.

31. The proceedings are now at an end, and the process may, on the expiry of the eight days, be transmitted for extract.

32. *Extract.*—Interlocutors granting authority to disentail should be extracted in duplicate. One of the duplicates is the warrant for the Keeper of the Register of Entails recording the instrument of disentail, and he retains it. The other falls to be recorded in the Register of Sasines.

33. In an application for authority to record a deed of entail, it is not necessary to extract the decree authorising the Keeper of the Register of Entails to record the deed of entail. A certified copy of the interlocutor, written on a print of the petition, is a sufficient warrant.

34. In applications for authority to uplift money consigned in bank, warrant is generally granted ordaining the bank to pay over the money to the petitioner or his agent on a certified copy of the interlocutor, thus saving the expense of extract.

35. *Reclaiming days.*—Reclaiming notes against interlocutors pronounced in any application under the Entail Acts fall to be lodged in eight days.

III.—LANDS CLAUSES PETITIONS.

1. Petition for Appointment of Oversman in Reference under the Lands Clauses Act, 1845.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. & Co. [*design*],

Humbly sheweth—

That by notice addressed by C. D. [design] to the said petitioners, A. B. & Co., dated , and served upon them the , both days of , 19 [specify nature of notice and its effect].

That of this date, by deed of nomination and submission addressed to the said C. D., the petitioners (they and the said C. D. having failed to agree as to the compensation to be made to the petitioners for their interest in the subjects to be taken) gave notice to the said C. D. that they had nominated and appointed, as they thereby nominated and appointed, E. F. as arbiter on their part for settling the question of disputed compensation, and required the said C. D. either to concur with them in said nomination and appointment of the said E. F. as sole arbiter, or otherwise to name another person to act as arbiter on their part along with the said E. F. for the settlement of the said question of disputed compensation in terms of the Lands Clauses Consolidation (Scotland) Act, 1845. A copy of the said deed of nomination and submission is herewith produced.

That on this date the said C. D. by deed of nomination nominated and appointed G. H. as arbiter on his part, to whom and to the said E. F., the arbiter nominated by the petitioners as aforesaid, all claims competent to the petitioners against them have thus been submitted and referred. A copy of the said deed of nomination is herewith produced.

That the said E. F. and G. H. respectively accepted of and agreed to act under the said submission, and that of this date the agents of the petitioners, by letter

addressed to each of the said arbiters, requested them, within seven days from the date thereof, to appoint an oversman in the said reference, in terms of the said Act; and that of this date the said arbiters, by letters addressed by them respectively to the clerk of the reference, intimated to him that they were unable to agree as to the appointment of an oversman, and that such appointment would require to be made by the Lord Ordinary in terms of the Act. The request by the petitioners' agents to the arbiters was duly intimated to the said C. D., and a copy of that letter of request and copies of the said letters by the arbiters to the clerk to the reference are herewith produced. In these circumstances the petitioners find it necessary to make application to your Lordships for the appointment of an oversman.

That this petition is presented under sec. 27 of the Lands Clauses Consolidation (Scotland) Act, 1845.

[The prayer will be for intimation and service on eight days' induciæ on respondent and on the two arbiters, and will then proceed]: and on resuming consideration hereof, either with or without answers, to nominate and appoint, in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, a fit and proper person to be oversman in the said reference, with the powers conferred by the said statute; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.
On expiry of induciæ, grant prayer.

2. Petition of Trustees for Authority to Uplift Consigned Money.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. and C. D. [*design*], surviving trustees of the deceased E. F.,

Humbly sheweth—

That the petitioners are the surviving trustees of the now deceased E. F., nominated and appointed by, and acting under his trust disposition and settlement, dated , and registered in the books of Council and Session.

The said trust disposition and settlement contains a general conveyance in favour of the trustees therein named of the testator's whole means and estate heritable and moveable (including therein the heritable subjects after mentioned), in trust for the purposes therein mentioned; and [narrate shortly further purposes if necessary]. The said settlement contains no power of sale.

The testator died on , survived by his widow, sons, and daughters, the latter of whom are not concerned, and have no interest in this application. The sons were [specify].

That the Railway Company, as authorised by the Railway Act, , have purchased and taken from the petitioners, as trustees foresaid, for the purposes of the said Act, All and Whole that piece of land extending to , lying in the parish of , and county of , comprehending the whole of the land and property marked with the numbers of the parish of , and county of , on the deposited plans of Railway No. , and described in the deposited Books of Reference relative to said deposited plans referred to in the said Railway Act, .

That by valuation and relative declaration, dated pronounced by and two practical valuators, appointed by the said railway company and the petitioners, the purchase money or compensation to be paid by the said railway company to the petitioners was fixed at the sum of £ .

That of this date the said sum of £ was con-

signed in the Bank, for the purpose of being applied by, and to be subject to, the control and disposition of the Court of Session, in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, sec. 67, conform to receipt herewith produced.

That the petitioners desire to obtain authority to uplift the said sum of £ , and to apply and divide the same according to the directions contained in the said trust disposition and settlement relative to the testator's heritable estate.

That this petition is presented under secs. 67, 68, 77, and 79 of the Lands Clauses Consolidation (Scotland) Act, 1845.

[The prayer will be for intimation and service on all concerned, including railway company and bank, on an induciæ of eight days, and will then proceed]: and on resuming consideration hereof, with or without answers, to authorise the petitioners to uplift and receive the said sum of £ consigned as aforesaid, with the interest due thereon; and to grant warrant to and ordain the said Bank to pay over to the petitioners the said sum, with interest as aforesaid; and to find the said Railway Company liable to the petitioners in the expenses of this application; or to do otherwise in the premises as to your Lordships shall seem fit.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, grant the prayer *de plano*, or

Remit to man of business for inquiry and report, and

If such remit made, decree in terms of his report, with expenses, against the railway company in terms of prayer.

3. Petition by a Railway Company to Uplift Money Consigned.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of the [*design*] Railway Company, incorporated under [specify Act or Order],

Humbly sheweth—

That, in the exercise of the powers conferred upon them by the [specify Act or Order] and Acts of Parliament therewith incorporated, the petitioners required to purchase and take certain lands, situated in the parish of , and county of , belonging to A. B., extending to imperial measure or thereby, and by statutory notice to treat, dated , of which service was accepted by the agents for the said A. B. on the petitioners intimated that the said lands were required, and would be taken by them for the purposes of their railway.

Part of the said lands are in the occupation of C. D., as tenant of the said A. B., and on the petitioners served a notice to treat upon the said C. D., intimating that the said lands occupied by him were required, and would be taken by them for the purposes of their railway. The lands occupied by the said C. D., as aforesaid, extend to acres imperial measure, or thereby.

The petitioners being desirous of obtaining immediate possession of the said ground, under and in terms of sec. 84 of the Lands Clauses Consolidation (Scotland) Act, 1845 (8 Vict. cap. 19), and sec. 36 of the Railway Companies (Scotland) Act, 1867 (30 & 31 Vict. cap. 126), applied to the Board of Trade to appoint a valuator to make the valuations prescribed by the said sec. 84 of the first-mentioned Act, and on the Board of Trade appointed E. F. to be the valuator to make the said valuations. The said E. F. on determined the value of the said lands belonging to the said A. B., or of his interest therein, at the sum of £ , and of the said lands occupied by the said C. D., or of his interest therein, at the sum of £ . The petitioners, on , deposited in the Bank the said sum of £ to the credit of an

account in name of the said A. B., and the said sum of £ to the credit of an account in name of the said C. D.

Both deposits were made subject to the control and disposition of your Lordships, all in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, and more particularly of sec. 84 thereof. The deposit receipts are herewith produced. The petitioners also granted to the said A. B. and C. D. bonds in terms of the said 84th section of the said Lands Clauses Consolidation (Scotland) Act.

The petitioners and the said A. B. have now entered into an agreement, dated , whereby the petitioners agreed to pay to the said A. B., and the said A. B. agreed to accept, the sum of £ sterling, with interest at five per centum per annum from the time of entering upon said lands until payment, as the purchase money or compensation payable to the said A. B. in respect of the taking of the said lands and the operations of the petitioners therein, including claims of severance. A conveyance and discharge by the said A. B. will be produced.

The petitioners have also agreed to pay to the said C. D., and the said C. D. has agreed to accept, the sum of £ , with interest at five per centum per annum from the time of entering upon said lands until payment, as the compensation payable to the said C. D. in respect of the taking of the said lands, and the operations of the petitioners therein, including claims of severance. A discharge by the said C. D. will be produced.

In these circumstances the petitioners are now entitled to uplift the said sums of £ and £ consigned as aforesaid, with the interest which has accrued thereon, in terms of the said 86th section of the Lands Clauses Consolidation (Scotland) Act, 1845, which provides as follows:—[Take in 86th section].

The said deposits having been made subject to the control and disposition of your Lordships, the present application is necessary to enable the petitioners to uplift the same.

[The prayer will be for intimation and service to parties interested and to bank on induciæ of eight days, and will then proceed]: and thereafter to grant warrant to and ordain the said Bank , upon production of a

certified copy of the interlocutor to follow hereon, to make payment to the petitioners of the said sums of £ and £ , with the interest which has accrued thereon; and in the event of any party appearing and opposing this application, to find such party liable in the expenses caused by their appearance; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.
On expiry of induciæ, grant prayer.

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4. PETITION OF A ROYAL BURGH FOR AUTHORITY TO UPLIFT AND APPLY CONSIGNED PRICE OF LANDS, AND PAY OFF BONDS AFFECTING BURGH ESTATE.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of [*design* Corporation, Burgh, or otherwise],

Humbly sheweth—

That the petitioners, as representing the community of the Royal Burgh of , are proprietors of, *inter alia*, All and Whole [short description of lands].

Under the Lands Clauses Consolidation (Scotland) Act, 1845, and for the purposes of [specify Act or Acts], and the Acts incorporated therewith, the Company, incorporated by the said , have taken [detail portions or portion of land taken], forming parts of the said lands of belonging to the petitioners.

The petitioners and the said Company having referred the purchase money or compensation to be paid by the said company to the petitioners for the said ground, and for any permanent damage or injury to the adjoining lands belonging to the petitioners, to as

valuator for the petitioners, and
as valuator for the said company, these gentlemen issued an award, dated , by which the said purchase money or compensation was fixed at the sum of £ sterling. A copy of this deed of nomination, with the award of said valuators, is herewith produced.

The said Company have obtained from the petitioners a conveyance of the said ground taken by them as aforesaid, with clause of entry as at . A copy of the disposition is herewith produced.

Instead of paying the said purchase money or compensation to the petitioners, the said Company, in terms of sec. 67 of the Lands Clauses Act, on consigned the said sum of £ in the Bank , "which sum of £ sterling is this day placed to the credit of the said Burgh of in account with the said bank, for the purpose of being applied by and to be subject to the control and disposition of the Court of Session, all in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, all as the consignation receipt, dated the said day of , and granted by the said bank in itself more fully bears. A copy of the relative consignation receipt is herewith produced.

Under the said 67th section, moneys thereby directed to be consigned may be applied, under the authority of the Court of Session, *inter alia*, "in the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land, in respect of which such money shall have been paid, or affecting other lands settled therewith on the same heirs, or for the same trusts or purposes, or affecting succeeding heirs of entail in any such lands whether imposed and constituted by the entailer, or in virtue of the powers given by the entail, or in virtue of powers conferred by an Act of Parliament."

Sec. 68 is also referred to.

The petitioners are desirous to uplift the said money, and to apply the same as part of their Corporation funds. The subjects sold form as aforesaid part of . Certain bonds fall due at , and the petitioners desire to apply the said money in discharge *pro tanto* of the same. In particular, the following bonds fall due, viz., (1) bond in favour of dated for £ ; and (2) bond in favour of

No. dated , for £ . The petitioners propose to apply the said consigned money in repayment *pro tanto* of these two bonds. Said bonds will be produced.

By sec. 79 of the said Lands Clauses Act, the Court is authorised to order the expenses, including therein all reasonable charges and expenses incident thereto, of, *inter alia*, obtaining the proper orders for any of the purposes therein mentioned, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants, to be paid by the promoters of the undertaking.

[The prayer will be for intimation and service on all persons interested, including company and bank, on an induciæ of eight days, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, to grant warrant to and authorise the petitioners by the hands of to uplift the foresaid sum of £ sterling consigned in the said with all interest due thereon from the date of the consignation of said sum, and warrant to the said bank to pay the said sum accordingly; further, to grant warrant to and authorise the petitioners to apply the said sum when so uplifted to the special purpose above set forth; and further, to find the said Company liable to the petitioners in the expenses hereof and of the application of the said consigned fund, and in all reasonable charges and expenses incident hereto and the procedure to follow hereon, and to decern and ordain the said company to pay such expenses to the petitioners; or to do further or otherwise as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, remit to man of business to report; or grant the prayer, with expenses.

If remit made, warrant to uplift at sight of reporter, and finding company liable in expenses.

5. Petition by Trustees for Authority to Uplift and Invest two Sums of Consigned Money, and Apply same in Purchase of Land.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. and others [*design*], surviving trustees, original and assumed, of the now deceased C. D.,

Humbly sheweth—

That the petitioners are the trustees (original and assumed) of the now deceased C. D., of , acting under [here insert deeds under which trustees are acting].

That the petitioners, as such trustees, are the proprietors of, *inter alia*, the lands of , in the county of .

That the Railway Company, incorporated by the as authorised by "The Railway Act, ," have purchased and taken for the purposes of the said Act, pieces of land, extending to [insert extent of lands, situation, &c.].

That in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, the petitioners and the said Railway Company entered into a submission, dated , whereby both parties nominated and appointed [insert name of arbiter or arbiters and oversman], for the purpose of determining the purchase money or compensation to be paid by the said company to the petitioners, for and in respect of the said lands and others so taken as aforesaid, and for all damage done, or to be done, to the petitioners' remaining lands by the construction, by the said company, of the works authorised by their said Act.

That by decree-arbitral, dated the , the said found the sum of [here specify the terms of decree-arbitral].

That of this date the said sum of £ was consigned in the [insert bank], to the intent that the same should be applied, under the authority of the Court of Session, to some one or other of the purposes specified in the Lands Clauses Consolidation (Scotland) Act, 1845, conform to receipt herewith produced.

That the said Railway Company, as

authorised by have also purchased, and taken for the purposes of the said Act, pieces of land, extending to acres, in the parish of , and county of .

That in terms of the said Lands Clauses Consolidation (Scotland) Act, the petitioners and the said railway company entered into a deed of submission, dated , whereby both parties nominated and appointed the said [insert the arbiter's name, or names of arbiters and oversman] to be sole arbiter for the purpose of determining the purchase money or compensation to be paid by the said railway company to the petitioners, for and in respect of the said lands so taken as aforesaid, and for all damage sustained or to be sustained by the petitioners, or done or to be done to their remaining lands by the construction of the works authorised by said Act of [here specify the terms of decree-arbitral].

That of this date the said sum of £ was consigned in the [insert bank] to the intent that the same should be applied, under the authority of the Court of Session, to some one or other of the purposes specified in the Lands Clauses Consolidation (Scotland) Act, 1845, conform to receipt herewith produced.

That the two consigned sums amount together to £ .

That [insert name of seller of lands] are proprietors of [insert description of lands].

That has agreed to sell said [insert lands] to the petitioners at the price of £ , and the petitioners propose to apply said consigned sums, amounting to £ , in payment *pro tanto* of said price.

That this petition is presented under secs. 67, 68, 77, and 79 of the Lands Clauses Consolidation (Scotland) Act, 1845.

[The prayer will be for intimation and service on the railway company, bank, and all having interest, on an induciæ of eight days, and will thereafter proceed]: and on resuming consideration hereof, to authorise the petitioners to uplift and receive the foresaid sums of £ and £ consigned as aforesaid, with the interest due thereon, and to grant warrant to and ordain the said Bank to pay over to the petitioners the said sums, with interest

as aforesaid, and to grant authority to the petitioners to apply the said sum of £ *pro tanto* in the purchase of the said lands; and further, to find the said Railway Company liable to the petitioners in the expenses of this petition and of the procedure to follow hereon; or to do further or otherwise in the premises as to your Lordships shall seem fit.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, remit to man of business.

Decree in terms of his report, granting warrant to uplift and invest, with expenses against railway company.

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6. PETITION BY TRUSTEES FOR AUTHORITY TO UPLIFT AND INVEST CONSIGNED MONEY.

[The petition is by a body of trustees under a deed of mortification for an hospital or infirmary containing absolute prohibition of sale or burdening of lands conveyed, and is presented in virtue of the Lands Clauses Act.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B., &c. [*design trustees*],

Humbly sheweth—

That the petitioners are proprietors in trust under the deed of mortification of All and Whole the lands of [describe deed and lands]. The said deed of mortification provides that of the acting trustees for the time shall be a quorum.

That the petitioners are duly infeft in the said lands and others, conform to the said deed of mortification dated and recorded as aforesaid.

That the said deed of mortification provides, *inter alia*, "that no part or portion of the lands hereby conveyed,

or of those to be afterwards acquired by my said trustees, as after mentioned, shall ever be sold, burdened, mortgaged, impignorated, pledged, or applied for any purpose whatever, and that the whole rents and proceeds thereof shall be expended for the uses of the hospital or infirmary after mentioned, and not otherwise"; and further, "that the residue of my means and estate to be paid over to my said trustees in pursuance of the directions to that effect contained in my said general trust disposition and settlement, along with any balance of the rents of said lands of and others thereby mortified which may remain otherwise unappropriated, shall be invested by my said trustees in the purchase of landed property within the counties of , as opportunities occur, the lands to to be so purchased and the rents thereof to be mortified perpetually as hereinbefore specified, and to remain inalienable as aforesaid in all time thereafter; and the disposition or dispositions and other necessary deeds to be taken accordingly."

That in pursuance of the last-mentioned provision, the petitioners' predecessors acquired All and whole [here take in description of lands, titles, &c.].

That the Railway Company, incorporated by Act of Parliament, have, in virtue of their statutory powers, taken certain portions of the said lands and others before described for the purposes of their railway. The sum payable by the said railway company for the said portions of land and for the injury done to the adjoining land belonging to the petitioners, as trustees foresaid, has been fixed by two valuators, one of whom was nominated by the said railway company, and the other by the petitioners, in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, at the sum of £ .

That this sum was consigned by the said railway company on the day of , in the [insert bank], in name of the petitioners, on deposit receipt, to be applied under the authority of your Lordships, in terms of the provisions of said Lands Clauses Consolidation (Scotland) Act.

That by sec. 67 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is provided that [take in section].

By sec. 68 of the same Act it is provided [take in section].

That as yet no opportunity has occurred for applying the said sum of £ , in terms of the foresaid 67th section of the Lands Clauses Consolidation (Scotland) Act, or in the purchase

of landed property within the counties of , or , as provided for in the said deed of mortification, and it still remains deposited in the said bank.

That in terms of the 68th section of the Lands Clauses Act above quoted, the petitioners, as trustees foresaid, propose, with the approval of your Lordships, to uplift the said sum of £ , consigned as aforesaid, with interest accrued thereon, and to lay out the principal sum in the purchase of consols, being public funds, until an opportunity for a permanent investment in terms of the statute or of the said deed of mortification may occur, and to apply the accrued interest as revenue.

That by investing the said principal sum in consols as aforesaid, the trust under the charge of the petitioners will benefit pecuniarily, as the interest to be received thereon will be considerably higher than that allowed by the foresaid bank.

[The prayer will be for intimation and service on all concerned, including bank and railway company, on an induciæ of eight days, and will then proceed]: and thereafter, on resuming consideration of this petition, with or without answers, to approve of the investment of the said consigned moneys in the purchase of consols to be transferred to the names of the petitioners, or to a quorum of them, to the amount of the principal sum of £ , consigned as aforesaid, and upon being satisfied as to the purchase of the said consols, to authorise and direct the petitioners, as trustees foresaid, to uplift from the said bank the said sum of £ , being the principal sum consigned in the said bank as aforesaid, together with the interest accrued thereon up to the date of uplifting the same, the said interest to be applied by the petitioners, as trustees foresaid, as revenue; and to grant warrant to and ordain the said Bank, Limited, to pay the said sum of £ , with interest thereon, to the petitioners, or to a quorum of them, as trustees foresaid, and to ordain the receipt for the said sum of £ to be delivered up, as also to authorise and ordain the whole interest which shall become due on the said sum of £ , so long as the same is invested in consols as aforesaid, and remain untransferred, to

be paid to the petitioners and their successors in office, as trustees foresaid; and further, to find the said Railway Company liable in payment of the expenses attending the investment of the said sum of £ , and incident thereto, including the expenses of this application and of the procedure under the same, reserving to the petitioners their claim against the said company for the expenses of or incident to any future investment or other disposal of the said sum of £ , which your Lordships may authorise, and to give such further directions and orders; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, remit to man of business to inquire and report.

Warrant to uplift and invest at sight of reporter in terms of his report, and further remit to him to see this done.

Decree interponing authority to investment in terms of final report of man of business and finding railway company liable in expenses.

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7. PETITION OF THE TRUSTEES OF A CHURCH TO UPLIFT CONSIGNED FUND.

[This was a case where a *quoad sacra* parish church had been taken by a railway company under the powers of an Act of Parliament under the Lands Clauses Act and a special statute, and the value consigned in bank.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. &c. [*design*],

Humbly sheweth—

That the petitioners are the minister, the kirk-session, and the trustees of the church and parish of , in the Presbytery of and Synod of . The said parish

of . was disjoined and erected into a parish *quoad sacra* by decree of disjunction and erection pronounced by your Lordships, as Commissioners for the Plantation of Kirks and the Valuation of Teinds, under the authority of the Act of Parliament 7 & 8 Vict. cap. 44, particularly secs. 12 and 13 thereof. Said decree is dated , and extracted [here specify date of decree]. The deed of constitution of the said church and parish granted under the authority of the General Assembly of the Church of Scotland provides that the property of the said church should be vested in the following individuals, viz.:—The procurator for the Church of Scotland for the time being, the principal clerk of the General Assembly of the Church of Scotland for the time being, and the convener of the committee of the General Assembly of the Church of Scotland for the endowment of chapels-of-ease for the time being, who should be trustees *ex officiis*, and their successors in office, and in the individuals therein named, being the managers of said church, and the successors in office of the said managers, as trustees to be elected in manner therein provided. By disposition dated [specify disposition under which church conveyed to the petitioners].

The Railway Company, in virtue of the powers conferred upon them by the [specify Act of Parliament] and other Acts incorporated therewith, purchased, and by agreement with the session and trustees of , and the Presbytery of , took for the purposes of said Act All and Whole [here describe ground and church].

The sum payable in respect of said subjects as purchase money or compensation has been fixed by the valuation of two valuators mutually chosen in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, at the sum of £ . Said sum was, on , consigned in the Bank, and placed to the credit of the trustees of the said church and parish of for the purpose of being applied by and to be subject to the control and disposition of the Court of Session, all in terms of the said Lands Clauses Consolidation (Scotland) Act, 1845, in exchange for a disposition by said trustees, with consent therein mentioned, in favour of the said Railway Company, with entry at [date of entry]. The said disposition has been granted.

By sec. 67 of the said Lands Clauses Consolidation (Scotland) Act, 1845, it is provided [take in section].

By sec. 68 of the same Act it is provided [take in section].

By sec. 79 of the same Act it is enacted that in all cases (with certain specified exceptions) of moneys deposited in bank under the provisions of said Act or the special Act or any Act incorporating the Lands Clauses Consolidation (Scotland) Act, 1845 [take in section].

By section [here take in special provisions of Railway Act as to consignation of price, re-erection of church, and consignation of money, till church erected and opened for worship].

[Here specify endowments of the church.]

The petitioners, after careful inquiry and consideration, applied to the said Presbytery, suggesting that a new church should be erected on a site in or near [give details as to new church site, &c. If church not yet erected, and warrant is wanted to uplift interest on consigned sum to pay for any temporary place of worship, then say].

The interest accrued on the said consigned fund of £ is payable to the incumbent of the said church, less the usual expenses incurred for congregational purposes. These expenses consist chiefly of an annual rental of £ for the use of a temporary church erected at , where the congregation still continue to worship. It is therefore necessary that warrant should be granted to uplift the interest accrued to date, in order to pay the current expenses of maintaining the religious ordinances in parish.

An application is about to be made to your Lordships, as Commissioners for the Plantation of Kirks and Valuation of Teinds, for transportation of the parish and endowment to the new parish to be designated at [specify]. Meantime, the petitioners are desirous of obtaining the authority of the Court, under the Lands Clauses Acts, to uplift and apply at the sight of a reporter to be named by the Court the interest accrued on the consigned fund. [Omit this last paragraph if no interest has to be uplifted.] They are also desirous of obtaining the authority of the Court to uplift and apply the consigned fund itself, as and when the same may be required for payment of the cost of the site, and for the building of the

new church and hall, and for the investment of the balance in such a way and manner, and subject to such conditions, as your Lordships may direct.

[The prayer will be for intimation and service on an induciæ of eight days on railway company, bank, Presbytery, clerk, and all parties interested, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, to appoint, if thought necessary, the Clerk of Court or other competent person at whose sight the interest accrued, and that may hereafter accrue on consigned money, may be uplifted and applied, and to grant warrant to the said Bank to make payment to the petitioners of the interest which has accrued and which may accrue on said deposit of £ from the date of consignation, and that upon presentation of the deposit receipt endorsed by the said trustees, or a certified copy of your Lordships' interlocutor granting such warrant; and further, to grant warrant to and authorise the petitioners to uplift the said consigned fund from the said bank, and the interest accrued thereon, at the sight of a person to be appointed by the Court; and to grant warrant to and ordain the said bank to make payment to the petitioners of the foresaid consigned fund upon presentation of the deposit receipt therefor endorsed by the said trustees or a quorum of their number, in such sum or sums and at such time or times as the petitioners may require the said fund, either in connection with the payment of the cost of the said new site or of the erection of said new church and hall, or in connection with the suitable investment of any balance of the price, and such payments to be applied at the sight of a person appointed by the Court; and further, to find the said Railway Company liable in the expenses of and incidental to the investing, uplifting, and application of any balance of the consigned fund amounting as aforesaid to £ , and of the procedure with reference thereto, and to give such further orders and directions; or to do further

or otherwise in the premises as to your Lordships shall seem proper, and to decern.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, remit to a man of business to see money uplifted and applied.

Decree in terms of report, with expenses as craved.

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8. PETITION BY A RAILWAY COMPANY FOR AUTHORITY TO UPLIFT CONSIGNED MONEY.

[This petition was presented by a railway company who had acquired right to, or absorbed by special statute, the railway company which made the original deposit, and are now in right to the deposit fund.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of Railway Company, incorporated by [specify Act and Order],

Humbly sheweth—

That the Railway Company, incorporated by [specify Act and Order], on deposited in the [specify bank] the sum of £ sterling, conform to deposit receipt, a copy of which is herewith produced, being the amount of the claim made by , the parties interested in and entitled to sell and convey certain lands, situated in the parish of , and county of , required by the said Railway Company for the purposes of their Acts. The said sum was deposited in the said Bank, by way of security for payment, by the said Railway Company, of such purchase money or compensation as might thereafter be determined to be due to the parties interested as aforesaid in the said lands, and in order that the said Railway Company might forthwith enter upon and use the said lands, under the powers of secs. 84 and 85 of the Lands Clauses Consolidation (Scotland) Act, 1845, and the other Acts relating to the said Railway Company;

declaring that the said deposit should be subject to the control and disposition of the Court of Session. By section of the " Railway Act, ," it is provided [take in section incorporating the two railway companies]. A copy of the said Act is herewith produced and referred to. The last-mentioned Act was passed on and in virtue of the powers conferred on the petitioners by the said section, the petitioners, as in room and place of the said Railway Company, paid to the said the sum of £ sterling, and obtained a disposition of the said lands and others from the said . The said disposition is dated and is, with warrant of registration thereon, recorded in the Division of the General Register of Sasines applicable to the county of [date], both in the year .

That on the petitioners, as in right and place of the said Railway Company, under and in virtue of the last-mentioned Act, deposited in the said [specify bank] the sum of £ sterling, conform to deposit receipt, a copy of which is herewith produced, being the amount of the claim made by the party interested, and entitled to sell and convey certain lands situated in the parish of . and county of , required by the petitioners for the purposes of the said Acts. The said sum is the amount of the claim made by the said against the petitioners as the purchase money or compensation for the land so required, and injury to the remainder of his property, and which sum was deposited by way of security for payment of such purchase money or compensation as might thereafter be determined to be due to the said , and in order that the petitioners might forthwith enter upon and use the said lands, under the powers of secs. 84 and 85 of the Lands Clauses Consolidation (Scotland) Act, 1845, and other Acts relating to the said Railway Company and the petitioners; declaring that the said deposit should be subject to the control and disposition of the Court of Session.

That by disposition dated the day of and, with warrant of registration thereon, recorded in the Division of the General Register of Sasines applicable to the county of the day of the said , with consent of , in consideration of the sum of £ paid to the said , disponed to the petitioners the lands before referred to.

In the circumstances above set forth the petitioners are now entitled to receive payment of the said sums of £ and £ , with the interest which has accrued thereon, in terms of the 86th section of the said the Lands Clauses Consolidation (Scotland) Act, 1845.

The foresaid deposits having been made subject to the control and disposition of the Court of Session, the present application is necessary to enable the petitioners to uplift the same.

[The prayer will be for intimation and service on all concerned, including bank, on an induciæ of eight days, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, to grant warrant to and ordain the said Bank, Limited, to repay to the petitioners the sums of £ and £ contained in the deposit receipts before specified, together with the interest that has accrued upon the said sums from the dates when the same were deposited as aforesaid, and that upon delivery of the said receipts; or to do further or otherwise as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.
On expiry of induciæ, grant prayer.

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9. PETITION BY MINISTER OF CONJOINED PARISHES, WITH CONSENT AND CONCURRENCE OF MODERATOR AND PRESBYTERY AND THE HERITORS OF CONJOINED PARISHES, TO UPLIFT AND APPLY CONSIGNED MONEY.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B., minister of the conjoined parishes of and , in the Presbytery of with consent and concurrence of the Moderator and

whole remanent members of the said Presbytery, and also of the heritors of the said conjoined parishes,

Humbly sheweth—

That the petitioner, the said A. B., is and has been since the year the incumbent of the said conjoined parishes of and , and in possession of the benefice thereof.

In pursuance of the provisions of the Railway Act, , the railway company purchased and took, for the purposes of said Act, the manse of said conjoined parishes, and the offices connected therewith, and also certain parts and portions of the glebe extending to acres roods poles or thereby, imperial measure. The purchase money or compensation payable by the said company for the subjects so taken and for the damage or depreciation caused to the remaining portions of said glebe was fixed by arbitration, in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, as follows, viz.:—

1. Price or value of land taken, - - £
2. Damage or depreciation to remaining land, - - - - - -

Amounting together to - £

3. Price or cost of a new manse and offices, and of forming gardens and pleasure grounds in connection therewith, and that in lieu of the manse, offices, gardens, and pleasure grounds taken by the said company as aforesaid, and inclusive of allowance for any disadvantages in respect of want of amenity which the new manse and grounds may have because of immaturity or otherwise, - - -

£

The said two sums of £ and £ were, on [date], conform to consignation receipt herewith produced, consigned by the said company in the [name of bank], together with (1) the sum of £ , being interest (less income tax) on the said sum of £ from to the date of consignation; and (2) the sum of £ , being interest (less income tax), on the said sum of £ from

to the date of consignation, for the purpose of being applied, under the authority of the Court of Session, in terms of the Lands Clauses Consolidation (Scotland) Act, 1845. The said sums of principal and interest amount together to £ .

The said Presbytery and heritors and the petitioner had agreed that a new manse and offices should be erected on a site on the glebe, and they accordingly obtained plans and estimates for the erection thereof on the site referred to, but it was found that the amount of the estimates exceeded the sum awarded as aforesaid for a new manse and offices, and it was therefore resolved not to proceed with the erection of buildings on said site, in conformity with said plans. Thereafter, an offer was made by , to sell to the Presbytery and heritors a house belonging to him called , with the offices and garden ground attached thereto, situated in the immediate neighbourhood of , at the price of £ , with entry at , and the Presbytery and heritors and the petitioner, after consulting their architects, being satisfied that the said subjects would, with some alterations, be suitable for a manse, offices, and garden, resolved that the same should be purchased accordingly, to be possessed and occupied by the petitioner, as minister of said conjoined parishes, and his successors in that office, as in lieu of the manse, offices, and garden taken as aforesaid. An arrangement for the purchase and sale of said subjects has accordingly been concluded. Extracts from the minutes of the Presbytery and heritors, containing the resolutions of these bodies on the matter, are herewith produced. The site of said house and offices, with the garden ground thereto attached, extends to [specify extent]; and a feu-duty of £ per annum, and a wayleave for a drain of per annum, are payable in respect of the subjects. To redeem or provide for the said feu-duty and wayleave, a further sum of about £ will be required. Certain repairs and an alteration of the drainage, together estimated to cost £ , will be necessary in order to make said house suitable for a manse, and the accommodation in the offices will also require to be increased, at an estimated cost of £ .

The said Presbytery and heritors, and the petitioner, the said A. B., were found entitled, as against the said railway company, to their expenses in the said arbitration, as provided

for in the Lands Clauses Consolidation (Scotland), Act, 1845, and the same were taxed at the sum of £ ; but, over and above this sum, they have incurred to their agents, in connection with the said arbitration and with the settlement of the accommodation works provided for their use by the said company, certain additional or extra-judicial expenses, which are not recoverable from the said company under the said Act, consisting largely of disbursements, and amounting to the sum of £ or thereby, subject to taxation. The said Presbytery and heritors, and the petitioner, the said A. B., have also incurred, and will yet have to incur, certain expenses for fees to architects, solicitors, and others, for professional assistance in advising as to the purchase of said subjects, finding an investment for part of said compensation, and also in connection with a proposal to erect a new manse on part of the glebe, and otherwise, in consequence of the taking of the manse and part of the glebe by the said company as aforesaid, which expenses are not recoverable from the said company.

By the Lands Clauses Consolidation (Scotland) Act, 1845, (8 Vict. cap. 19, sec. 67), it is enacted that the purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation or other person having a partial or qualified interest only in such lands, and not otherwise entitled to sell or convey the same, or the compensation to be paid for any permanent damage to any such lands, shall be paid into bank, to the intent that the same shall be applied, under the authority of the Court of Session, *inter alia*, "in the purchase of other lands, to be conveyed, limited, and settled upon the same heirs, and the like trusts and purposes, or in the same manner, as the lands in respect of which such money shall have been paid stood settled; or if such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such a manner as the said Court shall direct." And by sec. 68 of said Act it is provided that until the money can be so applied, it shall be retained in the bank at interest, or shall be laid out and invested in the public funds, or in heritable securities, and the interest, dividends, and annual proceeds thereof shall from time to time, under the order of the Court

of Session, be paid to the party who would for the time being have been entitled to the rents and profits of the lands.

The petitioner is now desirous, with the consents foresaid, under the authority of your Lordships, to uplift the said principal sum of £ , and (1) to apply £ thereof in payment of the price of the said house, offices, and grounds of , purchased as aforesaid for a new manse, offices, and garden for the petitioner and his successors; (2) to apply £ thereof, or such other sum as may be found necessary, in redemption of the said feu-duty and wayleave, or to invest or set aside the same in order to provide therefor; (3) to apply £ thereof, or such other sum as may be necessary, in the execution of said repairs and alteration of drainage; (4) to apply £ thereof, or such other sum as may be necessary, in adding to or improving the said offices; (5) to apply £ thereof, or such other sum as may be necessary, in payment of the said additional or extra-judicial expenses in connection with said reference and said accommodation works; (6) to apply such part thereof as may be necessary in payment of the expense otherwise incurred by the said Presbytery and heritors and the petitioner, the said A. B., in consequence of the taking of said manse and part of said glebe as aforesaid, which may not be recovered from the said company; and (7) to invest the balance thereof in one or more of the investments authorised by the said Land Clauses Act. The petitioner further desires to uplift and to apply for his own uses and purposes the said consigned sums of £ and £ of interest, and the interest accrued and to accrue on the whole consigned sum of £ .

In terms of sec. 79 of the said Lands Clauses Act, the petitioner is entitled to recover from the said Railway Company the expenses of this petition and incident thereto, including the expense of uplifting the said consigned money, and applying part thereof in the purchase and equipment of said subjects for a new manse, offices, garden, and pleasure grounds, and of investing part thereof as aforesaid.

[The prayer will be for intimation and service on all concerned, including railway company and bank, on an induciæ of eight days, and will then proceed]: and on resuming consideration of the petition, with or without answers, and after such

inquiry into the facts therein stated as your Lordships shall judge necessary, to grant warrant to and authorise the petitioner to uplift out of the foresaid consigned principal sum of £ the sum of £ , and to apply the same in payment of the price of the house, offices, and grounds of , mentioned in the petition, to be possessed and occupied by the petitioner as minister of the said conjoined parishes of and , and his successors in that office, as in lieu of the manse, offices, gardens, and pleasure grounds taken as aforesaid; to grant warrant to and authorise the petitioner to uplift from time to time out of the said sum of £ , and apply accordingly such sums as may be necessary to redeem or provide for the feu-duty and wayleave for drain mentioned in the petition, and to defray any expense of the alterations, additions, and repairs on said subjects, required as aforesaid, the amount of the expenses incurred and to be incurred by the said Presbytery and heritors and the petitioner in consequence of the taking by the said company of the manse, offices, and part of the glebe as aforesaid, in so far as said expenses have not been recovered or may not be recoverable from said company, and to uplift the balance of said sums of £ , and to invest the same in one or more of the investments authorised by the Lands Clauses Consolidation (Scotland) Act, 1845. Further, to grant warrant to and authorise the petitioner to uplift and apply for his own uses and purposes the said consigned sums of £ and £ of interest, and the interest accrued and to accrue thereon and on the said consigned principal sum of £ ; and also to grant warrant to and ordain the Bank to make the said respective payments to the petitioner, on receiving valid discharges therefor; and to find the said Railway Company liable in the expenses of this petition and incident thereto, including the expense of uplifting the said consigned money and applying the same as aforesaid, and to

decern accordingly; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, remit to man of business.

Decree per report of man of business, with expenses as craved.

IV.—MISCELLANEOUS PETITIONS AND APPEALS UNDER RAILWAY AND CANAL ACTS.

1. Petition for Appointment of Umpire.

[Presented under the Companies Acts. In this case the petitioner had declined to accede to a reconstruction, and the liquidator had therefore to value his shares, and arbiters had been nominated.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That by special resolutions passed at an extraordinary meeting of the [specify company] Limited, incorporated under the Companies Acts, 1862 and 1886, and having their registered office at , held on the day of and confirmed at an extraordinary general meeting of the said company on the day of , it was resolved that it was desirable to reconstruct the company, and that, with a view thereto, the said company should be wound up voluntarily, and that C. D. should be and was thereby appointed liquidator for the purpose of such winding up.

That the petitioner, who is a member of the said company, did not vote in favour of said resolutions, and within seven days after the same were passed, duly expressed his dissent therefrom in writing to the said liquidator, and thereafter the said liquidator agreed to purchase the petitioner's interest in said company at a price to be fixed by arbitration in terms of the Companies Act, 1862.

That the petitioner, on , by nomination of arbiters herewith produced by him and by the said C. D. as liquidator, nominated and appointed [name and design] as arbiter on the petitioner's behalf; and the said C. D., as liquidator foresaid, on foresaid, nominated and appointed [name and design] as arbiter on his, the said C. D.'s part, for the purpose of fixing the price to be paid to

the petitioner for his interest in the said company in terms of the 162nd section of the Companies Act, 1862. The nomination of arbiter is herewith produced.

That on last the said [name of arbiters] accepted office as arbiters foresaid. Minute of acceptance of office by said arbiters is herewith produced.

That on the the petitioner requested the said arbiters to appoint an umpire, and intimated that, failing such appointment, he would apply to the Court to do so.

That more than seven days have now elapsed since the petitioner so requested the arbiters to appoint an umpire. The said arbiters have failed, however, to make the appointment, and the petitioner now applies to the Court to do so.

This petition is presented under the authority of the Acts 8 & 9 Vict. cap. 17, secs. 133 and 134, and 25 & 26 Vict. cap. 89, secs. 161 and 162.

May it therefore please your Lordships to appoint this petition to be intimated on the walls and in the minute book in common form, and to be served on the said [insert arbiters' and liquidator's names], and to ordain them, and any one pretending interest, to lodge answers thereto, if so advised, within eight days; and thereafter, upon resuming consideration hereof, with or without answers, to appoint a member of the Faculty of Advocates, or such other person as your Lordships may think proper, to act as umpire in the foresaid submission; and to find any party appearing and opposing the prayer of this petition liable in expenses; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, appointment of umpire.

2. Petition for Decree of Dissolution of Partnership, Sequestration of the Copartnery Estate, and Appointment of Judicial Factor.

[In this case an interim factor was appointed pending the currency of the induciæ.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

[State the partnership entered into between the petitioner and respondents, and take in minute of agreement or contract of copartnery and the provisions thereof, particularly as to dissolution.]

That the said copartnership has carried on the business of [specify business, and where carried on]. Its business, however, has not been successful, and its trading years have resulted in financial loss. The partners now find that the business of the copartnery cannot be conducted profitably, and that, in the interests of all concerned, it is necessary that the copartnery should be brought to an end, and the affairs of the firm wound up. A special general meeting of the copartnership was held in , on , at which a statement of the affairs of the company as at , and prepared by [fill in name of chartered accountant who made up state], was submitted. From said statement of affairs, it appeared that the total assets of the copartnery amounted to the sum of £ , while the liabilities amounted to £ , thus showing a deficiency of £ . [Here insert resolution to wind up, if such resolved on.]

By sec. 35 of the Partnership Act, 1890, 53 & 54 Vict. cap. 39, it is provided as follows:—"On application by a partner the Court may decree a dissolution of the partnership in any of the following cases:— . . . (*e*) when the business of the partnership can only be carried on at a loss; (*f*) whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved." In the present case the business of the partnership can only be carried on at a loss, and it is just and equitable that it should be dissolved. It is also

necessary that a judicial factor should be appointed to carry on the business in the meantime, until he can dispose of the same, and to sell the same at the first reasonable opportunity, and to realise and distribute its assets. As the business requires to be carried on until a favourable opportunity arises for disposing of it, and there are current liabilities and transactions to be provided for, it is necessary that an interim factor should be appointed. The petitioners respectfully suggest as a fit and proper person for the office of judicial factor.

The existing partners in the copartnership, besides the petitioners, are [specify partners, and whether all concur in the application].

[The prayer will be for intimation and service on eight days' induciæ, and will then proceed]: and *in hoc statu*, to appoint the said [name of factor suggested] to be judicial factor *ad interim* on the estate of the said firm for the purpose of carrying on the same, with the usual powers, he always finding caution before extract, and to decern *ad interim*, and to dispense with the reading in the minute book *quoad* the said interim appointment; and thereafter, on resuming consideration hereof, with or without answers, to decree the dissolution of the firm or copartnership of , constituted under the said contract of copartnership mentioned in the petition, to sequestrate the estates of the said firm or copartnership, and to appoint the said , or such other person as to your Lordships may seem proper, to be judicial factor upon the estates of the said firm or copartnership, with the usual powers, he always finding caution before extract, and to decern; or to do further or otherwise as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ (where no answers lodged), decree of dissolution and appointment of factor.

3. Petition for Dissolution and Winding up Partnership under Partnership Act, 1890, and for Judicial Factor and Interim Factor thereon.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*], one of the partners of the firm of [*design*],

Humbly sheweth—

That the firm of [name of firm] was constituted by contract of copartnership [state terms of contract of co-partnery].

[Here state capital contributed by partners, and shares of each partner, and other facts needful to explain the constitution, business arrangements, division of profits, &c.]

[Here state the reasons which have led to the presentation of this petition. If an interim factor is wanted pending the disposal of the petition, state the circumstances necessitating this step.]

Under the circumstances above condescended upon, the petitioner desires that the partnership should be dissolved and a judicial factor appointed to wind up the firm's estate. For this office he respectfully suggests the name of [insert name of proposed factor].

This petition is presented under the Partnership Act, 1890, sec. 35.

[The prayer will be for intimation and service on remaining partner or partners, and all having interest, on eight days' induciæ, and will then proceed]: and *in hoc statu*, to appoint the said [name of factor suggested], or such other person as your Lordships may think proper, to be judicial factor *ad interim* for the purpose of carrying on the said business of [insert firm's name] until your Lordships shall grant or refuse the prayer hereof for the dissolution and winding up of the said firm, with the usual powers, he always finding caution before extract; and to dispense with the reading in the minute book *quoad* the said interim appointment if made, and to decern *ad interim;* and thereafter, on resuming consideration hereof, with or without answers, to decree a

dissolution of the partnership between the petitioner and the said , (respondent) constituted by the said agreement of copartnery [date of agreement], and to sequestrate the whole estate and effects of the said firm of [insert firm's name], and to appoint the said [name of factor], or such other person as your Lordships may think proper, to be judicial factor on the said copartnery estate for the purpose of winding it up, with the usual powers, he always finding caution before extract, and to decern: and to find the petitioner entitled to the expenses of this petition and procedure therein out of the firm's estate; or to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service, and appointment of interim factor if granted.

On expiry of induciæ (and if no answers lodged), decree of dissolution and appointment of factor.

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4. PETITION TO UPLIFT SUM, CONSIGNED UNDER TITLES TO LAND CONSOLIDATION (SCOTLAND) ACT, 1868, BEING BALANCE OF PRICE OF A PROPERTY SOLD UNDER A BOND AND DISPOSITION IN SECURITY WHICH HAD BEEN ASSIGNED.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B.,

Humbly sheweth—

That by bond and disposition in security, dated , and recorded in the Division of the General Register of Sasines for the county of , both days of , the petitioner, A. B., acknowledged to have borrowed and received from C. D. the sum of £ , and bound and obliged

himself and his heirs, executors, and representatives whomsoever to repay the said sum of £ . to the said C. D., his executors or assignees whomsoever, with interest and penalties as therein mentioned, and in security of the personal obligations contained in the said bond and disposition in security, the said A. B. disponed to and in favour of C. D. and his foresaids, heritably but redeemably, yet irredeemably in the event of a sale by virtue thereof [specify subjects].

That the said C. D. assigned the said bond to E. F. [specify assignation].

That the said E. F. sold the said subjects by public sale on [date of sale], under the powers of sale contained in the said bond, and they were purchased at the price of £ on behalf of G. H. [specify purchaser].

The transaction was settled on , when the price was paid to the said E. F. and the surplus remaining after payment of the debt due to him, with interest and expenses, is stated to amount to £ , which amount has been, in terms of the 122nd section of the Titles to Land Consolidation (Scotland) Act, 1868, consigned in the joint names of the sellers and the purchaser in the Bank upon a receipt in the following terms:—[take in receipt].

That the petitioner is desirous of uplifting the said consigned sum, with all accrued interest, and accordingly makes the present application to your Lordships.

[The prayer will be for intimation and service on eight days' induciæ on all having interest, including the purchaser of subjects and the bank in which money consigned, and will then proceed]: and thereafter, on resuming consideration hereof, with or without answers, to grant warrant to and authorise the petitioner to uplift from the said Bank the said consigned sum of £ , together with the interest accruing thereon; and further, to grant warrant to and ordain the said Bank to make payment to the petitioner of the said consigned sum of £ , together with the interest accruing thereon, and also to ordain the said E. F. to deliver the said consignation receipt to the petitioner in order that he may be in a position to deliver up the same to the bank, and to decern; or

to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of inducia, grant prayer, or, if deemed necessary, remit to man of business to report, and if this is done, when report is lodged,

Decree.

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5. PETITION TO UPLIFT CONSIGNED MONEY, BEING BALANCE ARISING ON REALISATION BY SALE UNDER A BOND AND DISPOSITION IN SECURITY.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That C. D. [design] was, at the date of the bond and disposition in security hereinafter mentioned, proprietor of and infeft in the subjects [specify].

That by bond and disposition in security, dated the day of , and recorded in the day of , the said C. D. acknowledged to have borrowed and received from E. F. the sum of £ , and bound and obliged himself and his heirs, executors and representatives whomsoever to repay the said sum of £ to the said E. F., his executors or assignees whomsoever, with interest and penalties as therein mentioned, and in security of the personal obligations contained in the said bond and disposition in security, the said C. D. disponed to and in favour of the said E. F. and his foresaids, heritably but redeemably, yet irredeemably in the event of a sale by virtue thereof, the said subjects [specify], and to which bond and disposition in security G. H. [design] acquired right by virtue of [here specify assignation or other title conveying the bond].

That the petitioner, the said A. B., acquired the said subjects under burden of the said bond and disposition in security, and was infeft therein, conform to disposition in his favour by the said C. D., dated and recorded .

That in the said G. H. called up the said bond and disposition in security for £ , and in virtue of the powers contained therein, exposed the said subjects [specify] for sale by public roup. On the said subjects were sold to [name of purchaser] at the price of £ , with entry at [specify entry].

That the said G. H. applied the said sum of £ in liquidation of debt secured by the said bond and disposition in security for £ , and in payment of the interest due thereon, and unpaid at the said term of , and in various other payments incident to the sale and conveyance of the said subjects.

That after making said several payments the said G. H. consigned the surplus of the said price, amounting to £ [specify consignation, and append copy consignation receipt].

That the petitioner is, therefore, having been the proprietor of the heritable subjects sold in virtue of the powers of sale on the present bond and disposition in security, and as such entitled to payment of the said surplus of the price consigned in the said bond as above narrated, and accordingly makes the present application to your Lordships.

[The prayer will be for intimation and service on eight days' induciæ upon all concerned, including sellers under bond and on bank where money consigned, and will then proceed]: and thereafter, on resuming consideration thereof, with or without answers, to grant warrant to authorise and ordain the said Bank to make payment to the petitioner of the sum contained in the said deposit receipt, with interest accrued thereon. Further, to grant warrant to and authorise the petitioner to uplift the said consigned sum, and to decern; or to do further or otherwise in the premises as to your Lordships may seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ, grant prayer, or, if deemed necessary, remit to man of business to report, and if this is done, when report is lodged,

Decree.

6. Petition to Uplift Consigned Money Deposited in the Winding up of a Liquidation.

Division.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner was a shareholder of the [specify company], in respect of shares of £ each, held by him in said company. The estates of the said company were some time ago liquidated under the Companies Acts under an order of the Court, and C. D. was appointed liquidator thereof. After discharging the whole debts and obligations of the company a surplus remained over of the estates thereof in the hands of the liquidator, which was repaid to the shareholders in proportion to their holdings. In a recent application by the liquidator for his discharge, he consigned on [date] in the Bank , *inter alia*, a sum of £ , being the proportion of said surplus due to the petitioner, who at the time was furth of Scotland and his address unknown, or [here insert any other circumstances causing the money to be consigned and the reason for now making the application].

Under these circumstances the petitioner makes the present application to your Lordship. The petitioner produces herewith a copy of said consignation receipt, and a certificate by the said liquidator that he was duly ranked for said dividend of £ or [here insert other productions in support of claim].

May it therefore please your Lordship, after such inquiry as your Lordship shall think necessary, to grant a warrant in favour of the petitioner upon the said Bank, ordaining the said bank to make payment to the petitioner of the said sum of £ consigned for his behoof as aforesaid, with the interest accrued thereon, and also warrant upon the Accountant of Court for exhibition of the consignation receipt that payment may be made accordingly, and to decern; or to do further or otherwise in the premises as to your Lordship shall seem proper.

According to Justice, &c.

CERTIFICATE APPENDED BY THE ACCOUNTANT OF COURT.

EDINBURGH [date].—The Accountant of Court certifies that a consignation receipt for £ , being amount of unclaimed dividends in liquidation of the [insert name] company, was lodged with him on [date], from which it appears that a dividend of £ was due to petitioner, and that the amount appears as still unpaid.

[Signed by Accountant.]

INTERLOCUTOR.

EDINBURGH [date].—The Lord Ordinary, having considered the petition and docquet appended thereto by the Accountant of Court, together with the productions made therewith, Nos. and of process, grants warrant in favour of the petitioner upon the Bank, Limited, , ordering the said bank to make payment to the petitioner of the sum of £ consigned for his behoof, as set forth in the petition, with the interest accrued thereon, and also warrant upon the Accountant of Court for exhibition of the consignation receipt, that payment may be made accordingly, all upon a certified copy of this interlocutor, and decerns.

[Signed by Lord Ordinary.]

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7. PETITION BY A LADY WHO IS A TUTRIX AND ADMINISTRATRIX-IN-LAW FOR AUTHORITY TO FEU.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B., widow of C. D. [*design*], and as such, tutrix and administratrix-in-law of E. F., only son of the marriage between her and the said C. D., who is at present in pupillarity,

Humbly sheweth—

That the petitioner's son, E. F., born of this date [insert date], and at present in pupillarity, is the heritable proprietor of the subjects specially described in the prayer of this petition. To these subjects the said pupil succeeded upon the death of his father, the late C. D., who, of this date [insert date], died intestate.

That a proposal has been received by the petitioner from , for a feu of the said subjects which are situated [specify extent and situation].

In the draft of the proposed feu charter which is produced herewith, and which has been adjusted between the parties, subject to the approval of the Court, the vassal and her successors in the feu are taken bound to erect, and maintain thereupon, buildings [specify] capable of yielding an annual rent [specify rate of annual rent, and also particulars regarding ground and rate of feu-duty paid in the neighbourhood].

[Give names of any persons requiring to be called for their interest as respondents.]

In view of the facts above stated, your petitioner is of opinion that it is not merely of great utility and advantage, but that it is necessary, in the proper administration of the pupil's estate, and in order to avoid probable loss thereto, that power should be granted to her to feu the subjects in question.

The draft of the proposed feu charter is herewith produced for the approval of the Court, subject to such modifications, if any, as to your Lordships may seem proper.

[The prayer will be for intimation and service on eight days' induciæ, and will then proceed]: and after such inquiry as to your Lordships shall seem proper, to grant power to the petitioner as tutrix and administratrix-in-law for the said , authorising her to grant a feu in favour of the said : All and Whole [take in description of property], and that at an annual feu-duty at the rate of per acre; further, to approve of the draft feu charter herewith produced as the form of the feu charter to be granted by the petitioner, subject to such modifications, if any, as your Lordships may deem necessary, and to decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.
Remit to man of business.
Decree in terms of his report.

8. Petition by a Liferenter for Authority to Charge Estate Duty on Fee of Estate where Fiar is a Pupil and has a Guardian.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, A. B., is liferentrix of the lands and estates of and in the county of , in virtue of the holograph last will and testament of her deceased husband, of and , dated and registered in the books of Council and Session .

The fee of the said lands and estates of and is by said last will and testament [specify destination and date of death of granter thereof]. The fee of the said estates of and is vested in the said [specify estates and in whom fee is vested].

The said and both reside at [here also specify any heirs, and if in pupillarity or minority; also any other persons having interest in fee of estate].

The said fiar [insert name] is a pupil, and the said is his legal guardian.

By the Finance Act, 1894 (57 & 58 Vict. cap. 74) it is, *inter alia*, enacted (sec. 8, sub-sec. 4) [take in section]. In terms of said sec. 8, sub-sec. 4 of said Act, the petitioner, on her succession to the liferent of the estates of and became accountable for the estate duty exigible on the death of the said testator [insert name] in respect of the said estates of and to the Commissioners of Inland Revenue, and the estate duty assessed by the Commissioners in respect of the same, at the rate of per cent., amounts to £ . The petitioner has, in terms of sec. 6, sub-sec. (8) of the said Finance Act, 1894, paid the first instalment of the foresaid duty of £ amounting to £ .

By the said Finance Act, 1894, it is, *inter alia*, enacted (sec. 9, sub-secs. 5 and 6) as follows:— [take in sec. 9, sub-secs. 5 and 6].

The petitioner now proposes to pay to the Commissioners the balance of the said estate duty still remaining unpaid, amounting to £ , and to repay to herself the foresaid instalment of £ already paid by her, amounting together to £ , and to charge the said estates of and with the said estate duty of £ , and for that purpose makes the present application to your Lordships.

The petitioner will, in the course of the process, produce evidence of payment to the Commissioners of the whole estate duty of .

[The prayer will be for intimation and service on seven and fourteen days' induciæ, and will then proceed]: and on resuming consideration of this application, with or without answers, and after such inquiry, if any, as to your Lordships shall seem necessary, to interpone authority to proposed transaction, and to ordain the said as legal guardian and tutor and administrator-in-law of the said to execute, with such consent of the petitioner, if any, as to your Lordships shall seem proper, within such time as to your Lordships shall seem proper, a bond and disposition in security, or bonds and dispositions in security, in ordinary form over the said estates of as particularly described in the schedule appended hereto, and that for the said sum of £ , and that in favour of the petitioner or such person or persons as may advance the said sum; such bond and disposition in security, or bonds and dispositions in security, binding the said [name of pupil] and his successors in the said estates of and , in their order successively, to repay the said sum, with interest and penalties, and failing the said [insert legal guardian], in his capacity foresaid, so granting the said bond and disposition in security, or bonds and dispositions in security, after being ordained so to do, to grant warrant to and authorise the Clerk of Court to execute, with such consent of the petitioner, if any, as to your Lordships shall seem proper, such bond and disposition in security, or bonds and dispositions in security, for said sum of

£ , and to decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

SCHEDULE REFERRED TO IN THE FOREGOING PETITION.

[Here insert description of lands over which it is proposed to grant the bond and disposition or bonds and dispositions in security referred to in the foregoing petition.]

PROCEDURE.

Intimation and service.

On expiry of induciæ, remit to man of business to report.

Decree in terms of report by man of business, and remit to him to see bonds executed and recorded.

Decree in terms of second report by man of business.

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9. PETITION OF A LIFERENTRIX FOR AN ORDER UNDER THE FINANCE ACT, 1894, ON TRUSTEES VESTED IN THE HERITABLE ESTATE OUT OF WHICH SUCH LIFERENT IS EXIGIBLE.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*],

Humbly sheweth—

That the late [specify name of the testator who left the trust deed containing the liferent provisions, also the nature of the deed and provisions thereof as to liferent and fee of estate].

The said testator died [date of death], survived by [specify the survivors of the testator].

In respect of the passing of the said estate on the death of to the petitioner and the said [here specify the person entitled to the fee of the estate], according to their respective rights, estate duty at the rate of per cent. became exigible, in terms of the Finance Act, 1894, upon the principal value of the estate, and the petitioner, the said A. B., has paid the sum of £ in respect thereof, conform to

receipts or certificates granted by the Inland Revenue, produced herewith.

By sec. 9, sub-sec. 5, of the said Finance Act, 1894, it is enacted that [take in sub-section].

By sec. 9, sub-sec. 6, of said Act, it is enacted that [take in sub-section].

And by sec. 23, sub-sec. 18, of the said Act, it is, *inter alia*, enacted that [take in sub-section].

[Here state the constitution of the trust under which the estate is held for behoof of the petitioner as liferentrix and the fiar who is entitled to the fee on her demise, and any infeftment in their favour by which title is completed.]

The petitioner, the said A. B., now desires, in virtue of the provisions above recited of said Finance Act, to obtain an order ordaining the said [names of trustees] as trustees foresaid, and as being now vested in the property, to grant a bond and disposition in security for the amount of the said estate duty, viz., £ , over the said estate of and others, and for that purpose makes the present application to your Lordships.

[The prayer will be for intimation and service in seven and fourteen days, and will thereafter proceed as follows]: and on resuming consideration of this application, with or without answers, and after such inquiry as to your Lordships shall seem necessary, to grant an order ordaining the said [insert names of trustees], as trustees foresaid, to grant in favour of the petitioner, the said A. B., or of any other person she may name, a bond or disposition in security for £ over the said estate of , such bond and disposition in security being in ordinary form, binding the said [names of trustees] as trustees foresaid, and their successors in the said estate of , to repay to the petitioner, the said A. B., or any other person she may name, the said sum of £ , with interest at five per centum per annum from the date of said bond and disposition in security and corresponding penalties, and containing a power of sale and all other usual and necessary clauses, and to

decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.

On expiry of induciæ.

Remit to man of business to report.

On report being lodged, grant prayer and remit to man of business to see bond executed and recorded, and to report.

Second report by man of business lodged.

Decree in terms of second report.

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10. PETITION FOR AUTHORITY TO MAKE UP TITLE.

[This petition is under sec. 14 of the Trusts Act, and was remitted (as is now very frequently the case) by one of the Lords Ordinary to the Junior Lord Ordinary for disposal. By the Trusts Act all petitions under it fall, in the first instance, to be presented to any of the Lords Ordinary except the Junior Judge. This petition is at the instance of beneficiaries in a case where the trustees had died without conveying heritage vested in them. There was also in this instance an annuity and ground annual which had burdened the subjects, but the former had lapsed and the latter been discharged.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. and C. D. [*design*],

Humbly sheweth—

That the late E. F., G. H., and I. J., as the accepting trustees acting under the trust disposition and deed of settlement and relative codicils of the deceased K. L., by a disposition dated , on the narrative therein contained, and for the purpose of carrying out in part the provisions of the said trust disposition and deed of settlement, assigned, disponed, and conveyed in favour of themselves, the said E. F., G. H., and I. J., and the survivors and survivor of them, and the heirs of the last survivor (the major number

being always a quorum), as trustees and trustee in trust, that they might hold, manage, and preserve the after-mentioned subjects for behoof of [here insert name of liferenter] in liferent, but for her liferent use allenarly, and that upon her death they might assign and dispone the same [here insert destination on expiry of liferent], heritably and irredeemably, All and Whole that plot or area of ground, with the buildings erected thereon [specify heritage shortly], described in the prayer hereof, but that always with and under burden of, so far as applicable thereto, the ground annual [specify details of ground annual]. The said ground annual was discharged on , and said annuity and house rent ceased to be payable on the death of the said [here insert name of liferenter and date of death].

No infeftment was taken on the said disposition by the foresaid [here insert name of trustees] by themselves or by their factors.

The said disposition is produced in process.

All the foresaid trustees are now dead without having assumed a new trustee or trustees, or being infeft in the said property, or having executed any conveyance of the said subjects and others. The heir-at-law of the last surviving trustee is [here specify name and design], who has not made up any title to the said subjects.

The said [here insert name of liferenter], for whom said trustees held as aforesaid, died on or about , having been predeceased by her only son [liferenter's son], who died on , unmarried.

The petitioners, , who are of age, are the only other children of the said [liferenter's name], and, as such, entitled for their own absolute use to the said heritable subjects and others, equally *pro indiviso* in terms of the trust created by the foresaid disposition. This is the sole purpose of the said trust remaining unfulfilled; but in consequence of all the trustees being dead, the said beneficiaries are unable to obtain a conveyance of the said heritable subjects.

That in these circumstances the petitioners make the present application to your Lordships, in terms of sec. 14 of the Trusts (Scotland) Act, 1867, for authority to complete in their own names a title *pro indiviso* to the said subjects and others described in the prayer hereof.

[The prayer will be for intimation and service on

eight days' induciæ, and will then proceed]: and thereafter, upon resuming consideration hereof, with or without answers, to grant warrant to and authorise the petitioners, the said A. B. and C. D., to complete in their own names a title *pro indiviso* [specify the heritable subjects either by reference to recorded deed or *ad longum*], and to decern; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation and service.
Grant prayer.

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11. PETITION BY THE WIDOW (WHERE HUSBAND HAD DIED INTESTATE) AS GUARDIAN AND TUTOR OF THE CHILDREN BORN OF THE MARRIAGE, WITH CONSENT OF A CREDITOR HOLDING A BOND OVER THE HERITAGE, FOR SPECIAL POWERS TO SELL HERITAGE.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*], with consent of C. D.,

Humbly sheweth—

That the late E. F. [specify business carried on by him] died intestate at , survived by the petitioner, his widow, and by a pupil child, G. H. [name and age]. The said E. F. did not nominate any tutor to his said child, and in terms of the Guardianship of Infants Act, 1886, the petitioner is guardian and tutor to the said [pupil's name], and, as such, she has lodged an inventory of the pupil's estate with the Accountant of Court.

The said E. F. was proprietor of heritable property consisting of [specify]. The said heritable property is burdened with a bond and disposition in security for the sum of £ granted by the said E. F. in favour of the concurring petitioner, the said C. D. [specify bondholder and give date of recording of the bond]. The said G. H. [insert name of pupil]

has succeeded to the said heritable property as heir-at-law to his father, and the petitioner has now had a title thereto made up in the person of her ward.

That the petitioner now finds it necessary to apply to your Lordships for special powers to sell the said heritable property and the business carried on therein. On [date] the petitioner lodged with the Accountant of Court a report setting forth the circumstances rendering such powers necessary, and craving the Accountant of Court to report whether, in his opinion, power should be given to her to sell to [insert name of purchaser and of property to be sold to him, and price to be paid for same, and when payable]. A sum of £ [insert the sum in bond], with interest, is payable to the said C. D. in respect of the said bond and disposition in security.

By opinion, dated , the Accountant of Court has stated as his opinion that, in the circumstances, and as no higher or other offer than that for £ has been received, authority may be granted to the petitioner to carry through said sale, and on payment of the price, to grant a conveyance of the subjects to the purchaser, and to execute all deeds usual and necessary.

The said report and opinion are produced, and are printed as an Appendix hereto.

That the petitioner is desirous of obtaining from your Lordships the special powers above noted in accordance with said report and relative opinion, and in the circumstances, as more fully set out in the said report, it is humbly submitted that, in the interests of the ward, the said powers should be granted.

[The prayer will be for intimation and service on eight days' induciæ on all having interest, and will thereafter proceed]: and on resuming consideration hereof, with or without answers, to grant warrant to and authorise the petitioner, as guardian and tutor foresaid, to sell to the said [insert name of purchaser] at the price of £ sterling [also give date of entry to heritage, &c.; here also insert the description in full of the subjects to be sold, or by reference to a recorded deed]; and also to grant warrant and authority to the petitioner as guardian and tutor foresaid to pay off, out of the said price, the said bond

and disposition in security for £ presently affecting the said subjects, to the said C. D., and to obtain a discharge of the said bond, and to record the same, or otherwise to do or concur in doing what may be necessary to disburden the said subjects thereof; and further, to authorise the expenses in connection with this application and the procedure to follow hereon to be paid out of the balance of the said price payable to the petitioner on behalf of her ward, and to decern *ad interim;* or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

APPENDIX.

1. Report by guardian and tutor to Accountant of Court.
2. Opinion by Accountant on same.

PROCEDURE.

Intimation and service.

On expiry of induciæ, grant powers, with expenses.

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12. REPORT BY THE ACCOUNTANT OF COURT UNDER SECS. 19 AND 20 OF PUPILS' PROTECTION ACT OF 1849, AND SEC. 12 OF GUARDIANSHIP OF INFANTS ACT, 1886 (49 & 50 VICT. CAP. 29), AGAINST A GUARDIAN FOR FAILURE OF DUTY, AND PROCEDURE THEREON.

Report by the Accountant of Court to The Honourable the Junior Lord Ordinary.

In the matter of A. B. [*design*], administrator-in-law of his daughter C. D. [*design*],

The Accountant has to report—

1. That the guardian's account for the year ending 1903, which was due within a month after that date, has not been lodged.

2. That the Accountant, of this date, in terms of sec. 19 of the Pupils' Protection Act, issued a requisition or order upon the guardian to lodge his annual account within seven days. The period for complying with said requisition having expired without the guardian having obtempered the same, the

Accountant, of this other date, and in terms of said sec. 19 of said Act, by notice to the guardian, intimated his intention to report the guardian's disobedience or neglect to comply with the present requisition or order to the Lord Ordinary in the event of the guardian not lodging objections in writing, if he had any, within forty-eight hours after such notice, and the guardian having failed so to lodge objections in writing, the Accountant, in terms of said sec. 19 of said Act, now reports the matter to your Lordship with a view to your Lordship confirming or repealing said requisition or order.

That the Accountant's fees for the past [specify period], amounting to [specify amount], have not been paid, although several notices have been sent to the guardian.

The Accountant craves warrant from your Lordship to serve a copy of this report and of the interlocutor following thereon upon the said A. B., ordaining him to lodge answers thereto within eight days after service, if so advised, and thereafter, on resuming consideration of this report, with answers, if any, to ordain the said A. B. forthwith to lodge an account of his intromissions for the year ending [specify], with relative vouchers, and to find him personally liable in the expenses of and incident to this report and to decern; or to do otherwise as to your Lordship may seem proper.

According to Justice, &c.,

[Signed by Accountant.]

INTERLOCUTOR.

EDINBURGH [date].—The Lord Ordinary, having considered the report by the Accountant of Court, No. of process, grants him warrant to serve by registered letter a copy of said report and of this interlocutor upon A. B., mentioned in said report, and ordains him to lodge answers, if so advised, within eight days after service.

SECOND INTERLOCUTOR ON THIS REPORT BY ACCOUNTANT OF COURT AGAINST THE ADMINISTRATOR-IN-LAW.

EDINBURGH [date].—The Lord Ordinary, having resumed consideration of the report by the Accountant of Court, No. 9 of process, and no answers being lodged by the administrator-in-law, Mr.

ordains the said . . . . . forthwith to lodge with the Accountant of Court an account of his intromissions for the year ending . . . . . , with relative vouchers, and that within ten days from the date of the intimation of this interlocutor being made to him by the Accountant, under certification that if he fails to comply with this order he will be subject to the future orders of the Court as may be determined on resuming consideration of this report; further, finds the said . . . . . personally liable in the expenses of and incident to the report No. 9 of process, and the former report No. 8 of process.

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13. Petition for Leave to Register Certificate of Judgment Obtained in the Supreme Courts of England or Ireland when more than Twelve Months have elapsed since Date of Judgment (31 & 32 Vict. Cap. 54, 3, 2).

Division.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [*design*],

Humbly sheweth—

That the petitioner, of this date, obtained judgment against C. D. before the [specify Court] for payment of the sum of £ . . . . . , being [give particulars of judgment].

That the petitioner, of this date, obtained a certificate of judgment for registration under the Judgments Extension Act, 1868, which is herewith produced.

That the petitioner is desirous of registering the said certificate in the Register for English and Irish Judgments in terms of sec. 2 of the said Judgments Extension Act, 1868, but more than twelve months having elapsed since the date of said judgment, the present application has become necessary.

May it therefore please your Lordship to authorise the Keeper of English and Irish Judgments to register the foresaid certificate of judgment in terms of the Judgments Extension Act, 1868; or to do

further or otherwise in the premises as to your Lordship shall seem proper.

According to Justice, &c.,

[Signed by Agent.]

Place.

Date.

PROCEDURE.

Decree granted to register certificate.

The warrant on the Keeper of Register for recording same is a certified copy of the petition and interlocutor following thereon.

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14. PETITION BY EXECUTRIX OF A DECEASED JUDICIAL FACTOR FOR DISCHARGE OF REPRESENTATIVES OF THE DECEASED FACTOR, AND FOR APPOINTMENT OF NEW FACTOR, AND WARRANT TO COMPLETE TITLE AND SELL STOCKS. SEPARATE EXTRACTS ALSO CRAVED APPLICABLE TO DIFFERENT SUBJECTS EMBRACED IN PETITION.

[This petition was presented under sec. 44 of the Conveyancing (Scotland) Act, 1874.]

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of A. B. [*design*], executrix of the late C. D. [*design*], judicial factor on the trust estate after mentioned, nominated and appointed by the Lords of Council and Session, conform to interim act and decree in his favour after specified, with consent and concurrence of [name and design parties interested in the estate],

Humbly sheweth—

That upon a petition presented by G. H. [name and design original petitioner, trustee of the deceased E. F.], your Lordships, of this date [insert date], nominated and appointed the said C. D. to be judicial factor on the trust estate of the deceased E. F.

That the said C. D., having found caution and obtained an extract of his appointment, entered upon the management

and administration of the trust estate. The accepting testamentary trustees of the said E. F. were discharged by decree of your Lordships of this date [insert date].

That the said C. D. continued to manage said estate until his death, which took place of this date [insert date].

That the said C. D.'s cautioners were [name and design], and his representative is the petitioner, the said A. B., as executrix of the said C. D., acting under a settlement by him in her favour, dated and recorded in the books of Council and Session .

That the factory estate at the date of the said death consisted of the following:—

[Give particulars of estate.]

[In this case the estate consisted of New Zealand 4 per cent. consolidated stock, and New Zealand Government 3½ per cent. inscribed stock, and Dominion of Canada 3 per cent. inscribed stock, and sums contained in various bonds and dispositions in security.]

That the only parties, other than the petitioner, who are interested in the said estate are [name and design].

That in these circumstances it has become necessary to apply to your Lordships to appoint a new factor to carry out the remaining purposes of the trust and to manage the estate, with power to him to assign and discharge the said heritable bonds without completing a feudal title thereto, or, alternatively, to make up title to the said estate in terms of the 44th section of the Conveyancing (Scotland) Act, 1874. The petitioner humbly suggests to your Lordships [name and design] as a fit and proper person for the office.

That the petitioner, A. B., is desirous that the accounts of the intromissions of the said deceased C. D. should be audited, and that his estate and representatives should be exonered and discharged, and warrant granted for delivery of his bonds of caution.

That part of the said trust estate was invested by the said [trustees of E. F.] in the bond and disposition in security, No. III., specified in the prayer of the petition, for the sum of £ over [here briefly specify heritage over which bond granted], to which bond the said C. D. duly completed his title as judicial factor foresaid. The full amount due under this bond has been repaid, but the bond has not been discharged. Power is accordingly respectfully craved in the prayer of the

petition to complete a title to said bond and disposition in security, in the name of the new factor, to enable him to discharge same.

That the petitioner anticipates that in the event of the judicial factor desiring to sell any of the first three investments above set forth (New Zealand 4 per cent. consolidated stock, New Zealand Government 3½ per cent. inscribed stock, and Dominion of Canada 3 per cent. inscribed stock), objection may be taken by the Bank of England to his title to do so unless the powers conferred on him by your Lordships include an express power to sell these stocks. Express power of sale is accordingly respectfully craved in the prayer of the petition.

[The prayer will be for intimation and service on eight days' induciæ on parties interested in the succession who are not consenters to the petition, and on the deceased factor's cautioners, and will then proceed]: and upon resuming consideration hereof, with or without answers, to appoint the said [name of factor suggested], or such other person as to your Lordships shall seem proper, to be judicial factor on the estate of the said deceased E. F., with the usual powers, including power to sell £ New Zealand 4 per cent. consolidated stock, £ New Zealand Government 3½ per cent. inscribed stock, redeemable 1940, and £ Dominion of Canada 3 per cent. inscribed stock, which form part of the factory estate, he always finding caution before extract; and to remit to the Accountant of Court to examine the accounts of the said deceased C. D.'s intromissions in the factory, and to report; and upon a report by the said Accountant of Court, to approve thereof, and to fix the balance of estate therein; and in the event of a balance being found due by the said deceased C. D., to decern and ordain his representatives to make payment thereof to the said [factor to be appointed], or to such other person as your Lordships may appoint judicial factor; and upon payment or consignation of such balance, to exoner and discharge the said C. D. and his representatives of his whole actings, intro-

missions, and management, as judicial factor foresaid, and to grant warrant to the Accountant of Court for delivering up his bonds of caution; and further, to grant warrant to and empower the said [name of factor to be appointed], or such other person as your Lordships may appoint, to assign and discharge the heritable bonds hereinafter specified without completing a feudal title thereto; or otherwise, and alternatively, to make up and complete a title in his own name as judicial factor foresaid, in terms of the Conveyancing (Scotland) Act, 1874, or by any other *habile* mode, to [here give full particulars of the various bonds and a full description of the security subjects]; and to authorise separate extracts to be issued, applicable to each of the securities above set forth, if required; to direct that the expenses of this application, and the proceedings to follow hereon, shall be paid out of the trust estate, and to decern; or to do otherwise as to your Lordships shall seem proper.

According to Justice, &c.,

PROCEDURE.

Intimation and service.

On expiry of induciæ, appoint factor, with usual powers, including special powers to sell the New Zealand and Dominion of Canada stock mentioned in the petition, and warrant granted in the special circumstances to assign and discharge the heritable bonds specified and described in the prayer, without completing a feudal title thereto, or otherwise, and alternatively, to make up and complete a title in terms of the Conveyancing (Scotland) Act, 1874; and remit to Accountant to examine and audit late factor's accounts.

On Accountant's report being lodged, discharge granted to late factor's representatives, and warrant given for delivery of his bond of caution.

15. Petition of Trustees for an Order on the Accountant of Court to Audit the Trust Accounts, &c.

Division.

Unto the Right Honourable the Lords of Council and Session.

The Petition of C. D., E. F., and G. H. [*design*], the trustees and executors of the late A. B. [*design*], who resided at , acting under his trust disposition and settlement,

Humbly sheweth—

That the said A. B. died on , leaving a trust disposition and settlement, dated and registered in the books of Council and Session on , both in . By said trust disposition and settlement the said A. B. gave, granted, assigned, and disponed to the petitioners, the said C. D., E. F., and G. H., and to the acceptors and survivors, and acceptor and survivor of them (the major number accepting and surviving and resident in Great Britain from time to time being always a quorum), and to the heir male of the surviving acceptor as trustees and trustee for the ends, uses, and purposes therein mentioned, and to their and his assignees whomsoever, all and sundry the whole means and estate, heritable and moveable, real and personal, then owing and belonging to him, or which should be owing and belonging to him at the time of his death, with the writs and vouchers thereof; and he appointed his trustees (the major number of them as aforesaid being a quorum) to be his executors and executor, and also to be tutors and curators and tutor and curator to such of the beneficiaries as might be in pupillarity or minority at or after his death.

The purposes of the trust were [narrate shortly]. An extract of said trust disposition and settlement is herewith produced and referred to.

On the death of the truster on , the petitioners agreed to accept the offices of trustees and executors, and subsequently entered upon the administration of the trust.

The truster in his lifetime carried on the business of , and ordinary claims against the estate, amounting to £ or thereby, have been intimated to the trustees. Had the petitioners been aware of the truster's large indebtedness at the time of his death, they

would have hesitated in accepting the offices of trustees and executors conferred upon them, although anxious to do everything they could to realise the estate for the best for behoof of the young family; but having accepted, they think it desirable that the trust accounts should be audited by the Accountant of Court.

The truster was survived by children, all of whom are minors [or if any major here specify], and of whom are still living in ; and they have been receiving about £ a week for maintenance.

Applications have already been made by ordinary creditors for payment of the debts due to them, but there will be nothing on hand to meet these claims till Whitsunday unless from the sale of .

By sec. 18 of the Judicial Factors (Scotland) Act, 1889, it is provided that "where a person deceased has left a settlement appointing trustees or other persons with power to manage his estate, it shall be competent for such trustees or other persons to apply to the Court of Session for an order on the Accountant to superintend their administration of the estate, in so far as it relates to the investment of the estate and the distribution thereof among the creditors of the deceased and the beneficiaries under the settlement, and the Court may grant such order accordingly; and if such order be granted, the Accountant shall annually examine and audit the accounts of such trustees or other persons, and at any time, if he thinks fit, he may report to the Court upon any question that may arise in the administration of the estate with regard to any of the foresaid matters, and obtain the directions of the Court thereupon." [Here specify any persons having interest and whom it is necessary to call as respondents.]

The trustees believe it to be in the interests of the trust that an order on the Accountant be pronounced to superintend their administration of the estate, and to audit their accounts, in terms of said section, and they accordingly present this application for the purpose of obtaining such an order.

[The prayer will be for intimation and service on all concerned on an induciæ of eight days, and will then proceed]: and thereafter, on resuming consideration of this petition, with or without answers, to grant an order on the Accountant of Court to audit periodically

the accounts of and to superintend the administration by the petitioners of the estate of the said late A. B., in so far as it relates to the investment of the estate and the distribution thereof among the creditors of the said late A. B. and the beneficiaries under his said trust disposition and settlement; and to find that the expenses of this application and relative procedure form a proper charge on said trust estate, and to decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

PROCEDURE.

Intimation.

On expiry of induciæ, order granted, with expenses.

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16. NOTE OF APPEAL FOR A RAILWAY COMPANY AGAINST THE VALUATION OF ASSESSOR OF RAILWAYS AND CANALS IN SCOTLAND.

Division.

Unto the Honourable the Lord Ordinary officiating on the Bills.

Note of Appeal for The Railway Company, incorporated by Act of Parliament, appellants; against the valuation for the year ending Whitsunday, , of the railway and works in Scotland known as the Railway, made by , the Assessor of Railways and Canals, appointed under the Act 17 & 18 Vict. cap. 91.

The appellants have been entered in the valuation roll made up by the Assessor of Railways for the year ending Whitsunday, , as proprietors and occupiers of the undertaking known as the Railway, and the yearly rent or value of said undertaking is fixed by him at the sum of £ . The said undertaking is situated partly in the parish of , burgh of , and county of , and partly in the parish of , burgh of , and county of . The following are

the valuations of said undertaking in the separate areas of assessment.

Parish of .

County of , - - - - £
Burgh of , - - - -

Total in Parish of , - - - £

Parish of .

County of , - - £
Burgh of , - -

Total in Parish of , - - £

Portions of the said undertaking are also situated within the District, and the Water, Drainage, Lighting, and Scavenging Districts. The following are the valuations of said portions, viz.:—

Water District, - - - - - £
Water and Drainage Districts, - -
Lighting District, - - - -
Scavenging District, - - - -

The appellants, on the ground set forth in the statement appended hereto, object to and appeal against the Assessor's valuation of said undertaking and its several portions.

May it therefore please your Lordship to appoint this appeal to be intimated to the Assessor of Railways, and thereafter to sustain the appeal and to give effect to the said objections, or one of them, or such other objections as may be competently stated against the said valuations, to recall the said valuations, or to appoint the same to be corrected accordingly; or to do otherwise in the premises as to your Lordship shall seem proper.

In respect whereof, &c.

[Signed by Agent.]

STATEMENT OF OBJECTIONS.

[Here state grounds of objections.]

In respect whereof, &c.

[Signed by Agent.]

PROCEDURE.

Intimation to Assessor of Railways.

Parties heard on note of appeal and answers, and appeal either sustained or dismissed.

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17. NOTE OF APPEAL FOR WATER TRUSTEES AGAINST THE VALUATION OF THE ASSESSOR OF RAILWAYS AND CANALS IN SCOTLAND.

Division.

Unto the Honourable the Lord Ordinary officiating on the Bills.

Note of Appeal for the Water Trustees, incorporated by , appellants; against the valuation for the year ending Whitsunday, , of the lands and heritages belonging to the appellants and forming part of their undertakings made by , Assessor of Railways, Canals, &c., and appointed under the Act 17 & 18 Vict. cap. 91.

The yearly rent or value of the lands and heritages in Scotland belonging to the appellants and forming part of their undertakings has been fixed by the said Assessor of Railways, Canals, &c., according to the valuation roll made up by him for the year ending Whitsunday, , at the sum of £ .

The said valuation is founded on the revenue or income drawn, including the rates and assessments levied by the appellants under their Acts of Parliament.

The appellants object to and appeal against the said valuation of their undertakings on the grounds set forth in the statement appended hereto.

May it therefore please your Lordship to sustain the appeal and the said objections, or such other objections as may be competently stated against the said valuation; to recall the said valuation; to find and declare that the appellants' undertakings are not liable to any valuation under the Acts, or otherwise, to find the valuation thereof to be such sum as shall, on due inquiry, be found to be the just and true amount of the same, on a just and legal basis of valuation, and

appoint the valuation, if any, to be altered and amended accordingly ; or to do further or otherwise in the premises as to your Lordship shall seem proper.

In respect whereof, &c.

[Signed by Agent.]

STATEMENT OF OBJECTIONS.

[Here state fully grounds of objections.]

In respect whereof, &c.

[Signed by Agent.]

PROCEDURE.

Intimation.

Parties heard and note of appeal either dismissed or sustained.

Part III.

BANKRUPTCY PROCEEDINGS.

BANKRUPTCY PROCEEDINGS.

Sequestration Applications.

All applications are made by petitions in manuscript, addressed to the Lord Ordinary officiating on the Bills, which may be signed by either petitioner, counsel, or agent. The Division of the Court should be marked on the backing *when lodging* same. When presenting the application a process should be made up as follows, viz.:—An inventory of process, with (1) petition; (2) interlocutor sheet; (3) duplicate inventory of process; (4) certified copy petition; (5) inventory of productions with petition. This is the proper mode of initiating proceedings, but it is usually found that, through urgency, only the petition, certified copy thereof, and the oath and voucher of debt are brought in the first instance to the Bill Chamber, in which case the first deliverance is written on the principal petition. With regard to the making up of all processes, the following rules are to be observed:—The inventory of process is never marked as a number. It does not set forth at length productions lodged, the inventory thereof being shortly referred to. The duplicate inventory of process is marked as a number, and in it productions are fully detailed as in the inventories of productions. It should be kept written up to date, because the duplicate inventory is borrowable, whereas inventories of productions are not borrowable, and it is thus the only record of what is in process which can be lent out. The inventory of process, petition, interlocutor sheet, and inventories of productions cannot be borrowed.

It is competent for a caveat to be put up in the Bill Chamber against an application for sequestration at anybody's instance, or at the instance of a creditor specially named. The form of caveat is a written note in these terms:—"Caveat for A. B. [design debtor]; should any petition for sequestration be presented [by C. D. (design) if a petition by a particular creditor be anticipated] praying for sequestration of the estates of the said A. B., intimation is requested to be made to the subscribers, his agents" [signed by debtor's agents, who add address and date]. When a petition is presented by any creditor (or by the creditor specially named

if the caveat be restricted as against him only) intimation is at once sent by the Bill Chamber clerk to the agents for parties of an immediate hearing, before any order is pronounced. A caveat is good for one month only, but may be renewed from time to time either by a new one being written or by the old one having the date altered and a fresh fee-stamp paid. The stamps are not affixed to caveats, but are entered into a book specially kept in the Bill Chamber for the purpose.

Some remarks may here be made anent productions which must be lodged with petitions by creditors.

PRODUCTIONS WITH PETITIONS BY CREDITORS.

1. Evidence of Notour Bankruptcy.

An execution of charge for payment unimplemented constitutes notour bankruptcy against ordinary debtors. But, in the case of (1) married women who do not carry on business for themselves, or who do not live apart from their husbands under decrees of judicial separation, (2) pupils, (3) lunatics, (4) peers, (5) members of Parliament, (6) persons resident abroad, and (7) corporate bodies, the expired charge must be followed by arrestment not loosed for fifteen days, or by poinding of moveables, or by adjudication of heritage.

An expired charge, produced as evidence of notour bankruptcy, need not be one at the instance of the creditor petitioning; for although such creditor, for the purpose of his petition, must himself have a claim of not less than £50, an expired charge on anybody's decree (even a Small Debt decree) against the debtor can be used. It may be noted that it is not *compulsory* to produce such evidence before obtaining the first deliverance. It must, however, be produced before the commissioner who reports on the evidence of domicile under commission granted in such deliverance.

The charge must have been given within four months of the date of presenting the petition.

2. Oath of Verity.

Care must be taken that the oath of verity be properly executed and sworn, because, unlike the affidavit for ranking, which may be rectified if necessary, the former cannot be altered in any way. In a recent case a petition was dismissed

owing to the accompanying oath being disconform to the provisions of the statute, the interlocutor being as follows:—"The Lord Ordinary, in respect of the failure of the petitioner to produce with the petition an oath duly taken before a judge ordinary, magistrate, or justice of the peace, as required by the statute, dismisses the petition: Finds no expenses due to or by either party, and decerns." If, therefore, on presentation of a petition, it be found that the oath produced is not in correct form, the only course to be followed is to hold back the petition until a properly executed oath can be obtained. This may perhaps, unfortunately, lead to a competing petition gaining precedence.

It has sometimes occurred that, where the petitioning creditor has sworn to the verity in England, he has done so before a *commissioner for oaths and affidavits*. Such an oath is of no effect, as the Act of 1856 (sec. 22) is specific in declaring that the proper functionary is either a judge ordinary, magistrate, or justice of the peace.

Oath by illiterate person.—An oath by an illiterate person does not require deponent's mark to be adhibited, a declaration as to his inability to write inserted in the oath being sufficient.

Oath of a Corporation.—An oath sworn by the "secretary, manager, cashier, clerk, or other principal officer" of a corporation is sufficient of itself without being supported by evidence of such deponent's appointment.

Oath by firm.—In the case of creditors being a firm or partnership, the oath should be taken by one of the partners. That he is a partner, and that he swears on account of his firm or partnership, should appear *ex facie* of the oath. Should the petitioning firm be one carried on under a firm-name by one individual, he in the oath must describe himself as sole partner thereof, "carrying on business under the firm-name," &c.

Oath where creditor resident abroad.—When the petitioning creditor is outwith the United Kingdom, an oath of *credulity* should be taken by his authorised agent or mandatory. This is more satisfactory than having an oath of verity sworn by the principal abroad, as his deposition before a foreign magistrate requires the formality of certification by a British Minister, or consul, or notary public. The two modes are, however, alternative.

Oath of credulity where creditor incapable of making deposition.—The deposition of his authorised agent, factor, manager, or guardian is to the effect that, to the best of deponent's knowledge and belief, the debtor is justly due, &c. A mandate, holograph or adopted as holograph, or a factory and commission, or such written authorisation as may be procurable, by the principal in favour of deponent, should be produced in support of an oath of credulity.

Oath where debtor is an executry or trust estate.—The creditor will make oath that "A., B., and C., as executors dative [or otherwise] of the deceased D., appointed," &c. [narrate appointment], "and the executry estate of the said deceased D., under their charge as executors foresaid, are justly due," &c. If a trust estate, alter accordingly.

Oath where debtor is deceased.—In this case deponent swears that deceased debtor was at the date of his death justly indebted, &c. It is necessary in such an oath to set forth that deceased at the time of his death was residing, or had a dwelling-house, or carried on business in some place in Scotland, and was at such time the owner of estate in Scotland.

Oath by trustees or executors.—One of the trustees or executors swears to the verity, he being described in the oath as "one of the accepting and acting trustees," &c., the deed or deeds of appointment being shortly referred to.

Conscientious objection to be sworn.—Where such exists, the oath should start with a declaration that deponent considers the taking of any oath is, on the ground of religious belief, unlawful; and in place of a sworn deposition, the deponent proceeds to emit an affirmation and declaration.

Note.—All documents referred to in an oath must be docqueted and subscribed by deponent and the justice of the peace or magistrate. If deponent be illiterate, then by the latter alone.

PRODUCTIONS WITH PETITION BY DEBTOR WITH CONCURRENCE OF CREDITOR.

1. Mandate by Debtor in favour of Agent presenting Petition.

The mandate should be express or, at least, clear as to its meaning. It should be either holograph, adopted as holograph, or tested, and must be dated.

A mandate contained in a trust deed is competent, but the name of a law agent enrolled in the Court of Session must be set forth in the deed as mandatory. A mandate of this sort is open to objection if it be not of recent date.

A firm's mandate should be written by a member thereof, and subscribed by the firm and by the individual partners.

A case occurred where a petition in name of a partnership was presented, with concurrence of qualified creditors, craving sequestration of the partnership estate. The petition was signed by a law agent, who produced two mandates in his favour, the first written by a partner, and signed with the firm signature; the second written also, and signed by that same partner as the only member of the copartnery resident in Britain, the two remaining partners being abroad. Sequestration was refused, as the application was not an administrative act within the scope of a partner's powers. Subsequently the Lord Ordinary was informed that the two absent partners had left powers of attorney behind them in favour of certain agents, and, in view of this statement, intimation of the petition was ordered "upon the known agents or attorneys in the United Kingdom of the two partners of who are mentioned in the petition as having left this country, that they may appear if so advised within four days after intimation." Intimation was accordingly made, and no answers having been lodged, the prayer of the petition was granted. (*See* forms of petition, &c., page 397.)

It is thought that, should the debtor be illiterate, his mark on the mandate, attested by two witnesses, would be sufficient.

If the debtor signs the petition himself, a mandate is naturally superfluous.

It must be kept in view that a mandate in favour of a firm of law agents will not be accepted, because a petition cannot be competently signed by a firm. If a mandate is, however, granted to one partner, whom failing to another, no objection can be taken to a petition signed by either of them. In any case the agents must be Court of Session practitioners.

A married woman with a business of her own may grant a mandate in regard to proceedings affecting same, without her husband's consent.

Mandates must be of recent date. They do not require to be stamped.

2. Oath by concurring Creditor.

The oath is in the same form as that of a creditor who is himself the petitioner.

The fact of the debtor having in his possession the concurring creditor's oath is of itself evidence of concurrence, and warrants the inclusion of his name in the petition.

PRODUCTION WITH PETITION BY DECEASED DEBTOR'S MANDATORY.

The Mandate.

This should be either holograph, adopted as holograph, or tested, and must be dated. It must be in specific terms. It is not essential that the words "after my death" be used. The mandate may be contained in a testamentary writing. A mandate granted by a debtor to an agent authorising application for sequestration does not fall with the death of the granter, but in this case the petition proceeds at the instance of the mandatory.

Note.—A mandatory of a deceased debtor does not require the concurrence of a creditor to the petition.

PROCEDURE.

I.—ON CREDITOR'S PETITION WHEN DEBTOR ALIVE.

The petition and relative documents being lodged, all being in order, the first deliverance is written on either the petition or on the separate interlocutor sheet. A copy of same is appended to the certified copy petition, which is then certified by the clerk, and is borrowed as the warrant for citation, &c. This deliverance orders citation of the debtor on an induciæ of seven days if within Scotland, or twenty-one days if furth thereof. The islands of Scotland, for citation, may require a longer induciæ than seven days, but this is in the discretion of the Lord Ordinary, who will keep in view the provisions of sec. 28 of the 1856 Act. Although the warrant granted is directed to macers and messengers-at-arms, the Citation Amendment Act, 1882, applies to bankruptcy proceedings, and a law agent enrolled in the Court of Session

may execute by post. The ordinary rules as to citation apply to sequestration proceedings.

The deliverance further directs publication of a notice in the *Gazette*. This first advertisement appears only in the *Edinburgh Gazette;* but be it observed that a notice of award of sequestration must appear in both *Edinburgh* and *London Gazettes*, as will be noted later. The first *Gazette* notice may appear at any time before sequestration is moved for, as the Act does not limit the time within which publication must be made.

A commission is also granted in the deliverance to a commissioner chosen by the Court to recover evidence of notour bankruptcy and evidence of domicile. The report of this commission must be made before sequestration can be moved for; and from the terms of the following form of report, one may see what kind of evidence should be adduced:—

At Edinburgh, the day of .
In presence of , commissioner appointed by the Honourable Lord by interlocutor dated , pronounced in petition at the instance of creditors to the extent required by law of for sequestration of the estates of the said to recover evidence of the notour bankruptcy of the said , and of the other facts necessary to be established: Of which commission the said accepted and appointed to be clerk thereto, to whom he administered the oath *de fideli administratione officii.*

Present—Mr. A., agent for the petitioning creditors (and Mr. B., agent for the debtor).

Compeared C., a witness for the petitioning creditors, who, being solemnly sworn and examined, depones and says—I am a painter and decorator at No. Street, Edinburgh. I know Mr. , the debtor in these proceedings. I have known him for several years past, he being a customer of mine. I have been employed by him during these years to do various pieces of work at his dwelling-house, No. Street, Edinburgh, and have met him on many occasions in his house in connection therewith. I have also called on and seen him at his shop,

No. Street, Edinburgh, with reference to accounts and also for instructions. In particular, I have had as many as six meetings with the debtor in his said shop within the year immediately preceding inst. [date of presenting petition], and also at least two interviews with him in his house during that year; and I know that he has resided at said house, and has carried on business at said shop during that period, and for some years previous thereto.

[*Cross*, if there be opposition.]

All which is truth, as deponent shall answer to God.

(Signed) C.
(„) Commissioner.
(„) Clerk.

Compeared also D., a witness for the petitioning creditors, who, being solemnly sworn and examined, depones and says—I am a house factor in Edinburgh and manage the property No. Street there. I know Mr. , the debtor in the present proceedings, and have known him for three or four years past. I have personally met and spoken to him several times during each year. The dwelling-house, No. Street, Edinburgh, occupied by the debtor, is under my charge as factor, and I have had dealings with him in regard to rent collection and repairs. Any time I have called at his house I have dealt with Mr. in person. In particular, I have had several interviews with him in his house within the year immediately preceding inst. [date of presenting petition], and have also on some occasions during that period had interviews with him in his shop, No. Street, Edinburgh; and I am aware that he has carried on business there during the year referred to, and that he has resided at his said house during that year and for three years prior thereto.

[*Cross*, if there be opposition.]

All which is truth, as deponent shall answer to God.

(Signed) D.
(„) Commissioner.
(„) Clerk.

Note.—The above two witnesses prove the facts of residence, having a dwelling-house, and carrying on business during the year prior to presentation of the petition. In the

petition all three may be alleged, but it is only requisite to prove one of the facts. It has sometimes occurred that difficulty has been found in obtaining absolute proof of the one fact founded on in the petition; so that for safety, the petition should bear, when possible, an averment of more than one of the three requisites.

Whether the documents constituting notour bankruptcy have been produced with the petition or not, the agent, or other person in whose hands they are, should be examined as a witness and haver as follows:—

Compeared also , a witness and haver for the petitioning creditors, who, being solemnly sworn and examined, depones and, as a haver, produces (1) extract of decree pronounced by the Sheriff-Substitute at Glasgow on [date], in action at the instance of , *pursuers*, against , the debtor in the present proceedings, for the sum of £ of principal, with interest and expenses as therein contained; and (2) execution of charge for payment following on said decree, given by , sheriff officer on [date]: Both of which productions are signed by the deponent, the commissioner, and clerk with reference to this deposition: Further, as a witness, depones and says—The time for payment allowed in said charge has expired, and to my certain knowledge no payment has been made by the debtor of either principal, interest, or expenses: All which is truth, as deponent shall answer to God.

(Signed) [Deponent].
(„) Commissioner.
(„) Clerk.

Note.—Each production should be docqueted—"Edinburgh [date].—Referred to in deposition of this date."

(Signed) [Deponent].
(„) Commissioner.
(„) Clerk.

The commissioner closes off his report with the following docquet:—"What is contained in this and the preceding pages is the report of the commission narrated in the first and second pages hereof, and is humbly reported by

(Signed) Commissioner.
(„) Clerk.

Edinburgh [date]."

The report is got up from the commissioner's clerk by the agent for petitioner, and is afterwards lodged in process along with *Gazette*, execution of citation, and minute craving sequestration. With the report there should be lodged, with an inventory, such documents as have been produced at the diet of commission.

Note.—The above commission should not be executed until after the debtor has been cited in terms of the first interlocutor, and intimation of the diet should be given either to the debtor or his known agent, although such intimation does not seem to be compulsory.

Recording of Abbreviate.

An abbreviate of the petition and first deliverance must be recorded in the Register of Inhibitions, &c., before the expiry of the second day after the deliverance has been signed.

The abbreviate is in these terms:—

Petition for sequestration of [name and design debtor in full].
Date of first deliverance day of

(Signed) [W.S., S.S.C., or Law Agent, or signed by petitioner himself.]

When recorded, the abbreviate is got up with the Keeper of the Register's certificate of registration appended to it; but it is not necessary to lodge same in the Court of Session process. It is, however, lodged in the Sheriff Court after the proceedings have been remitted thereto.

Minute Craving Award.

On the expiry of the induciæ, a minute, signed by counsel, agent, or petitioner, falls to be lodged, in which an award of sequestration is craved. This is lodged, together with report of commission, copy of *Gazette*, and any productions made at the diet of commission. At the same time, the certified copy petition, with execution of citation, is returned to process. In the prayer of the minute the date on which the first meeting of creditors is to be held must be set forth, as also the place of meeting. This meeting must be held on a date not less than six nor more than twelve days after the notice of the date of award of sequestration appearing in the *Edinburgh Gazette*, and care must be taken in fixing same and

in ordering insertion of such *Gazette* notice. It may be noted that, in the prayer of the petition, the blank spaces applicable to the above-mentioned meeting are never filled in, the date and place of meeting being copied from the minute when the award of sequestration is written out. The place of meeting named in the prayer of the minute must be within the jurisdiction of the Sheriff to whom the proceedings are to be remitted. If the debtor desires to appear in the process, either he or his agent attend at the Bill Chamber and put a marking of appearance on the principal petition. This necessitates his being heard before an award of sequestration can be made, unless the appearance is in the interval withdrawn. When appearance is made, and insisted in, the debtor requires to get intimation of the minute, and the petition will fall to be enrolled by the petitioner's agent in the motion roll of the Lord Ordinary. It may here be stated that it is only in the case where appearance is made, in petitions for sequestration or proceedings connected therewith, that it is necessary to formally enroll in the Bill Chamber motion roll of Court. It is not competent for the debtor to lodge answers to a petition for sequestration unless the Lord Ordinary, by interlocutor, specially allows him to do so. When appearance is entered, the date of meeting of creditors in the minute should be left blank until the petition and minute have been disposed of by the Lord Ordinary.

When no appearance is made, sequestration now falls to be awarded. Even in the face of opposition, if the provisions of the statutes have been complied with, the petitioner is entitled to his award, as the only competent objections are (1) payment of the debt, or (2) a prior award of sequestration. If payment of the debt be made, the expenses incurred can only be recovered from the debtor by action.

The interlocutor, in addition to sequestrating the debtor's estates, appoints the creditors to hold the first meeting to elect a trustee and commissioners [as to which see *supra*, page 368], and also remits the proceedings to the Sheriff of the county (1) where the debtor has his domicile, or (2) where the principal creditors reside, or (3) where the majority of debts have been contracted, or (4) where the estate may be realised to best advantage. When the petitioner asks that the proceedings be remitted to the Sheriff of a county other than

that where the bankrupt is domiciled, the Lord Ordinary requires to be satisfied that it is in the interest of the creditors that such should be done. In practice, a letter by petitioner's agents to the clerk, with particulars of the estate, names of creditors, &c., is accepted as sufficient evidence.

The second deliverance does not order advertisement in the *Gazette*, but in terms of sec. 48 of the Act of 1856 a notice of the award must appear in both the *Edinburgh* and *London Gazettes*. In the case of the *Edinburgh Gazette* the notice must be published within four days from the date of award, and in the case of the *London Gazette* the same must be inserted within six days from the date of award.

On the award being granted the petitioner's agent will have prepared a fresh copy of the petition, with both deliverances, which is certified by the clerk. The productions will be borrowed up and, along with this certified copy, be included in the Sheriff Court process which the agent makes up and transmits to the sheriff clerk before the meeting of creditors. The skeleton process left, consisting of inventory of process, petition, certified copy petition containing execution of citation, interlocutor sheet, duplicate inventory of process, report of commission, minute for award, and inventories of productions will remain in the Bill Chamber.

Further proceedings in the sequestration will now be in the Sheriff Court. In regard to these proceedings, it may be noted that when a part of the estate is in England, Ireland, or other dominion of His Majesty the trustee's act and warrant requires to be endorsed by the Lord Ordinary on the Bills or by any other judge. The principal act and warrant is produced to the clerk, along with a copy certified by the sheriff clerk, on the latter of which the following docquet is appended:—"[date]—Authenticated by me, one of the judges of the Court of Session, in terms of sec. 73 of the Bankruptcy (Scotland) Act, 1856, 19 & 20 Vict. cap. 79."

Reclaiming against Refusal of First Deliverance.

In a recent case, where the Lord Ordinary had dismissed a petition for sequestration on the ground that the charge founded on was under suspension, the petitioner reclaimed to the First Division, who reversed, and remitted to the Lord Ordinary to proceed as if no suspension had been brought or a sist of execution granted.

II.—ON CREDITOR'S PETITION WHEN DEBTOR DECEASED.

(1) When it is averred that Debtor died Notour Bankrupt.

The procedure will be practically the same as in the case of a living debtor. But in the petition the names of executors or representatives of deceased must be set forth, and in the prayer a warrant for their citation must be craved. The first deliverance will accordingly grant warrant for such citation. Notour bankruptcy and domicile must be proved in the same way as when the debtor is alive, and the other procedure will follow the ordinary lines.

(2) When Debtor Dies after Presentation and Service of Petition but prior to Award.

Sec. 34 of the 1856 Act, *inter alia*, enacts that "if the debtor shall die after the petition for sequestration is presented, the proceedings shall, notwithstanding, be followed out in terms of this Act, so far as circumstances will permit." In a case which recently came up before the Lord Ordinary for consideration, it was stated that after the petition had been served the respondent had died. The petitioners had, in terms of the above section, carried out the orders of the first deliverance as to citation, advertisement, and proving notour bankruptcy and domicile by executing the commission in the ordinary way. The award was granted by the Lord Ordinary officiating on the Bills in vacation; and from the terms of the interlocutor one may hold the procedure to be regulated thereby "so far as circumstances permit." The interlocutor was as follows:—"The Lord Ordinary, having resumed consideration of the petition, with the writs produced, together with a minute now given in for the petitioners, execution of intimation, copy of the *Edinburgh Gazette*, and other productions made therewith, and heard counsel for the petitioners: Finds that the respondent, · died after the presentation and service of this petition, and (as appears from the report of commission, No. 10 of process) was notour bankrupt at the date of his death on · 1902; sequestrates the estates and effects of the said now deceased, in terms of 'The Bankruptcy (Scotland) Act, 1856,' and Acts explaining and amending the same, and

declares the same to belong to his creditors for the purpose of the said Acts; ordains any successor who has made up a title to, or is in possession of, the estate of the said deceased to transfer the same so far as liable for the debts of the deceased to the trustee to be elected by his creditors; appoints the creditors to hold a meeting at the time and place mentioned in the said minute, viz., on the day of at o'clock noon, within to elect a trustee or trustees in succession and commissioners as directed by the statutes; and remits to the Sheriff of the county of at to proceed in manner mentioned in the said statutes."

Following on the award, the procedure will be the same as in the case of a living debtor.

(3) When Debtor has Died after First Deliverance but before Citation.

In this case the only course to be adopted is to take no action in the proceedings, and to lodge a new petition averring that debtor has died notour bankrupt as in (1) page 371.

(4) When Debtor has Died in Embarrassed Circumstances, but not Notour Bankrupt.

The petition may be either at the instance of (*a*) a creditor duly qualified, without concurrence of the debtor's successors, or (*b*) with concurrence of such successors. In (*a*) if a renunciation of the succession be not granted by the successors, the award cannot be given until after the lapse of six months. In (*b*) concurrence implies renunciation of succession, and sequestration can be awarded forthwith. It is possible, in case (*a*) to obtain a separate renunciation from the successors, which, being put into process, permits of sequestration being granted at once.

In regard to citation, it may be noted that sec. 24 of the 1856 Act requires that, if the debtor be dead, his successor shall be cited to appear as respondent. In somewhat vague terms the section provides for citation "if the debtor be dead . . . at the dwelling-house, or place of business occupied by him at his death." In practice this is held to mean that the citation of a successor who is not known shall be made at the deceased's house or place of business.

But if the successors' names and addresses be known, then citations addressed to them will be made at their own addresses. The petition should, in such event, set forth so far as known the names of heirs, successors, and representatives, and the first deliverance will grant warrant for their being cited accordingly.

It is not necessary to produce evidence of notour bankruptcy, or of domicile in proceedings under this head, and an award will either be granted on the expiry of the induciæ, or after the lapse of six months, according to circumstances as above stated. The award will contain an order ordaining any of the deceased's successors who has made up a title to, or is in possession of the estate, to convey the estates to the trustee as in (2) page 372.

Other procedure will be as in the case of a living debtor. (*See* form of petition, &c., page 387.)

III.—ON CREDITOR'S PETITION FOR SEQUESTRATION OF AN EXECUTRY OR TRUST ESTATE.

Petitions of this nature are possible, both in respect of debts due by the deceased and debts incurred by the executors or trustees in their fiduciary capacities. Such petitions are unusual, and objections have been stated as to their competency; but in the case of *Bain's Executors* in 1901 (unreported), Lord Pearson decided that sequestration of an executry estate could be awarded. In that case the claims conducing to embarrassment of the estate emerged after the executors had entered into the management thereof, and the petition was brought at the instance of the executors with concurrence of creditors of the estate. This sequestration was afterwards recalled on the ground that the concurring creditors' claims were not against the estate, but against the executors as individuals. It would seem, therefore, that an executry or trust estate may be considered as a "debtor" liable to be proceeded against through the separate executors or trustees in their fiduciary, but not in their individual capacities.

The petition, if the debt be one incurred by the executors or trustees, would require to set forth that the petitioner is a creditor to the extent required by law of the executry or trust estate of the deceased and of A., B., and C., the executors or

trustees, as such executors or trustees. Citation of the several executors or trustees will be prayed for, and the award craved will be one for sequestration of the executry or trust estates and of the estates of A., B., and C. as executors or trustees. (For form *see* page 390. *See* also petition for recall, page 404.) If the whole executors or trustees do not reside or carry on business in Scotland, or have not done so during the year preceding presentation of the petition, it seems doubtful whether such sequestration would be competent.

In the case of a debt due by the deceased, should it be desired to sequestrate his executry estate, the petition will set forth that petitioner *was* a creditor of deceased, that the executors have confirmed, and that sequestration of the executry estate and of the individual executors as executors is necessary. (For form, *see* page 404.)

IV.—ON PETITION BY MANDATORY OF DECEASED DEBTOR.

Although by the 1856 Act sequestration may competently be awarded at once without any concurrence, it is preferable, when possible, to have concurrence by the successors of the deceased to a petition by a mandatory, such concurrence being either contained in the petition or in a separate writing, in which latter writing a renunciation of the succession should be inserted. The concurrence of a creditor is, however, not necessary. If the successors concur in the petition as above, the petition will be at the instance of the mandatory "conform to mandate produced, with concurrence of the only children and heirs and successors of the said deceased ," or otherwise as the state of relationship may be. Notwithstanding such concurrence the prayer should crave that the Court "ordain any successor who has made up a title to, or is in possession of, the estate of the said deceased, to transfer the same, so far as liable for the debts of the deceased, to the trustee to be elected by his creditors." The petition should be signed by the mandatory, and also by those who concur (unless a separate concurrence be produced).

V.—ON PETITION BY DEBTOR WITH CONCURRENCE OF CREDITOR.

If the debtor does not himself sign the petition, the petition cannot competently be signed by a law agent unless a mandate authorising the application be produced. Petitions signed by counsel have, however, been accepted without mandates. (*See* mandate by debtor, &c., page 362.)

The concurring creditor's signature is not necessary to the petition, as, by delivering his oath to the debtor, concurrence is implied, and warrants the inclusion of the creditor's name in the instance. (*See* oath by concurring creditor, page 364.)

It is not necessary for the debtor to allege notour bankruptcy, and the first order on this petition will be one awarding sequestration. The procedure will be similar to that of a creditor's petition.

RECALL OF SEQUESTRATION.

As review of an award of sequestration is not competent, either by way of appeal or reclaiming note, a petition for recall is the readiest method of seeking a reversal.

Petitions (signed by counsel, agent, or petitioner) are addressed to the Lord Ordinary on the Bills, no matter whether the awards of sequestration be in the Sheriff Court or in the Bill Chamber. A process must in every case be made up in the usual way, as, even where the original sequestration proceedings remain in the Bill Chamber, the petition for recall is not regarded as incidental. Proceedings for recall are regulated by secs. 31, 32, and 33 of the Act of 1856. The usual case is that of the debtor seeking to have the award recalled on grounds which, although existing at the time of the application, could not be considered judicially as barring an award. There are various grounds which may be put forward, either by the debtor or by creditors, such as that a prior sequestration has been awarded in the Sheriff Court; or that a suspension of the diligence founded on has been granted; or that there is a latent defect in the oath and vouchers of the creditor petitioning for sequestration; or that the debt founded on has been satisfied, and debtor is not otherwise insolvent (which may require proof); or that the

evidence of domicile is erroneous; or that the debtor's estate is wholly vested in another person in trust or otherwise; or other grounds of the like nature.

By the 31st section of the 1856 Act it is made competent for "any debtor whose estate has been sequestrated without his consent, or the successors of any deceased debtor whose estate has been sequestrated without their consent, unless on the application of a mandatory authorised by the deceased debtor, or any creditor," to apply within forty days of the award for recall of same, but outwith the forty days nine-tenths in number and value of the creditors ranked on the estate may apply for recall in terms of sec. 32. This latter is, however, of rare occurrence.

If there be competing petitions by creditors for sequestration of an insolvent debtor it sometimes happens that one creditor, being in advance of another, may obtain an award in the Sheriff Court before one which is sought in the Bill Chamber is granted. It may be that (perhaps in ignorance of the running of the induciæ in the Bill Chamber) the Sheriff Court award has, on the application of the debtor, with concurrence of a creditor, been granted *de plano*. In ordinary circumstances the first case would require a petition for recall of the Court of Session award, but in the second case the Sheriff Court award may be the proper one to attack. Certainly, if with knowledge of the pending induciæ a sequestration has been taken out in the Sheriff Court as above, there is clear ground for recall of same being sought, the Court of Session proceedings being allowed to stand until the induciæ expires. But if the Lord Ordinary be satisfied of the *bona fides* and ignorance of Bill Chamber proceedings on the part of the Sheriff Court petitioner, then the Bill Chamber application will fall to be withdrawn by minute.

Examples of such competitions which have occurred go to show the desirability of putting up a caveat in the Sheriff Court of the debtor's domicile simultaneously with the lodging of a Bill Chamber petition for sequestration, no matter at whose instance such petition may be.

A form of petition for recall in a case of competition will be found on page 401.

DISMISSAL OF PETITION BY JOINT MINUTE.

It is competent to have the petition dismissed by joint minute for a petitioning creditor and a debtor, provided that no award of sequestration has been granted. Publication of the first *Gazette* notice does not stand in the way, but any creditor duly qualified may oppose such dismissal by putting in a minute craving to be sisted in room of the original petitioning creditor, and producing with such minute an oath of verity and state of debt in the usual form (sec. 34 of the 1865 Act).

For form of joint minute, of deliverance thereon, and of minute for opposing creditor, *see* page 407.

WINDING-UP OF ESTATE BY RESOLUTION UNDER SECTIONS 35 TO 45.

As the Act provides for a resolution of creditors being passed at a meeting for the election of a trustee, or at a subsequent meeting, an application for winding-up, in terms of the above sections, is more conveniently presented to the Sheriff than to the Lord Ordinary, although it may be presented to either. The sequestration having been remitted to the Sheriff, it is to him, naturally, that the application is generally made. Forms for procedure in both the Sheriff Court and Bill Chamber are, however, given on pages 408-411.

DISMISSAL OF PETITION BY THE COURT IN RESPECT OF AN ARRANGEMENT AMONG THE CREDITORS.

This may be effected in a case where no award has been granted; and the procedure which was adopted in one instance may here be detailed as an example of how the sequestration proceedings may be wound up without the actual authority of the Court being interponed to the arrangement come to.

In the case in question, an interim factor had been appointed in the first deliverance, and he having found caution, entered upon the management of the estate. An offer having been made to him for the purchase of the debtor's business (the only asset), the interim factor convened a meeting of creditors so far as known to the debtor and himself; and at

this meeting he (the factor) was authorised to accept the offer, and to divide the proceeds of the sale among the creditors. The sale was accordingly effected—although not by the factor, but by an agent representing all parties interested—and a division was made of the sum realised among the several creditors. It was then necessary that the interim factor's appointment should be recalled, warrant granted for delivery of his bond of caution, the petition dismissed, and the Keeper of the Register of Inhibitions, &c., authorised to mark the dismissal on the margin of the register. The petitioning creditors, therefore, lodged a note to the Lord Ordinary officiating on the Bills, with concurrence of the interim factor; and the prayer of same was duly granted, as will be seen in the forms given on page 415. This note was lodged in the original sequestration process.

APPOINTMENT OF INTERIM FACTORS.

It frequently happens that estates sought to be sequestrated consist to some extent of goods of a perishable nature, or goods of such sort as require immediate attention and disposal; and cases also occur where rents or tolls have to be at once ingathered, or urgency of some sort can be put forward in favour of an appointment being immediately made, for preservation of the estate, of an interim judicial factor. Such appointments are made pending the election and confirmation of a trustee, and applications for same may be made by any creditor interested. It is not necessary that such creditor should be qualified (by amount of claim) to petition for sequestration. The expense of a separate petition for interim factor is not, as a rule, allowed to a creditor who has already instituted proceedings for sequestration; and accordingly it is advisable to include a crave for a factor's interim appointment in the original petition, if there be a reasonable suggestion of necessity for such appointment.

A creditor who is not a petitioner for sequestration may, by separate petition lodged in the sequestration process, pray for appointment of an interim factor, and if this is granted, the expenses incurred come out of the estate.

By sec. 16 of the 1856 Act the Court may appoint a factor *ad interim* without application by creditors, if it seems necessary for the preservation of the estate.

It is provided in said section that applications for factors may be made by creditors. The bankrupt, however, may concur in any application.

Caution by such factors must be found before they are entitled to act. The bond of caution is prepared by the Bill Chamber Clerk, in whose custody it remains after approval.

An extract of appointment is not in practice required, as a certified copy interlocutor is held to be sufficient.

As the interim factor is, generally speaking, elected trustee, it usually happens that no steps are taken for discharge and for delivery of the bond of caution. The factor's appointment, of course, lapses so soon as the trustee's election is carried and confirmed, although his liability to account for his intromissions remains.

The Accountant of Court has supervision over interim factors; and in the case of a trustee being a different person from the factor, a discharge may be granted by the trustee if satisfied with the accounts of the latter.

(Form of separate petition is given on page 385, and incidental craves contained in original petitions will be found on pages 382, 389.)

DISCHARGE OF BANKRUPT.

(1) *On Composition.*

The proceedings, which are regulated by secs. 137 to 145 of the 1856 Act and sec. 6 of the amending Act of 1881, being of the nature of a compact between bankrupt and his creditors for their mutual benefit, require, as a rule, but the formal sanction of the Court; and although the *forum* may be either the Bill Chamber or the Sheriff Court, it is in practice found that the latter is the more convenient. Accordingly, the sanction of the Lord Ordinary is never sought to facilitate the compromise, and it would serve no good purpose here to deal with the subject of discharge on composition. The proceedings in the application for bankrupt's discharge (if instituted in the Bill Chamber) will be initiated by a report (MS.) by the trustee to the Lord Ordinary, setting forth the offer and acceptance of composition, and a form of such report, with some notes on relative proceedings, will be found on page 416.

(2) *Without Composition.*

(*See* secs. 146 to 149 of 1856 Act, sec. 3 of amending Act of 1860, and sec. 6 of amending Act of 1881.)

The bankrupt may present a petition for his discharge at the following stages and under the following circumstances, viz.:—

(*a*) At any time after his examination, if he can produce written consent of every creditor who has produced an oath for ranking:

(*b*) On the expiry of six months at least from date of award of sequestration, if he can produce the written concurrence or consent of a majority in number and four-fifths in value of such creditors:

(*c*) On the expiry of twelve months at least from date of award, if he can produce the written concurrence or consent of a majority in number and two-thirds in value of such creditors:

(*d*) On the expiry of eighteen months at least from date of award, if he can produce the written concurrence or consent of a majority in number and in value of such creditors:

(*e*) On the expiry of two years at least from date of award, without any concurrence or consent.

In sec. 146 of the 1856 Act, the terms "concur" and "concurrence" (of creditors) are used. This does not mean that such concurrence shall be stated in the petition for discharge, as in the case of a debtor's petition for sequestration. Separate minutes or letters by the various creditors may be lodged as productions relative to the petition, and these need not be holograph, adopted as such, or tested. The firm's signature, where the creditors are a firm, will be sufficient. (*See* forms and additional notes on procedure, pages 430-434.)

Intimation of Discharge.

The bankruptcy being at an end, it will now be necessary to clear the personal registers of entries relating to same, and this the agent for bankrupt will do by supplying to the Keeper of the Register of Inhibitions, &c., an abbreviate of the final deliverance for the purpose of his marking the discharge in the registers. (The abbreviate is in the form of

Schedule A of the Bankruptcy and Real Securities (Scotland) Act, 1857.) The Clerk of the Bills will himself transmit to the Accountant of Court a certified copy interlocutor granting discharge.

PROCEDURE WHERE CONCURRENCE OF A CREDITOR HAS BEEN BOUGHT BY BANKRUPT TO CARRY A COMPOSITION AGREEMENT WITH A VIEW TO HIS DISCHARGE. SECS. 150 AND 151 OF ACT OF 1856.

(1) *Petition to have creditor so concurring held liable in statutory penalty.*

A form of such a petition, with notes appended, is given on page 428.

(2) *Petition to have bankrupt's discharge annulled.*

A form, with notes, will be found on page 425.

TRUSTEE'S DISCHARGE.

(*See* secs. 152 to 155 of 1856 Act.)

A trustee may apply for discharge on final division being made of the funds, whether in the ordinary course of sequestration or in terms of a composition contract entered into between bankrupt and his creditors. But in addition to such a discharge, a trustee who has resigned office and has been succeeded by a new trustee is entitled to present a petition for exoneration and discharge and for delivery of his bond of caution.

If a trustee has held office as interim judicial factor prior to being elected trustee, he may pray for discharge as factor in the petition for discharge as trustee.

Forms of petitions are given on pages 434-438.

APPEALS AND MISCELLANEOUS FORMS.

A collection of forms will be found, commencing on page 439. Where thought necessary, notes as to procedure are given.

Collected *Gazette* notices applicable to sequestrations are given on page 472 onwards.

FORMS IN SEQUESTRATION PROCEEDINGS.

1. Petition by a Creditor for Sequestration of Debtor's Estate.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [*design creditor*] to the extent required by law of C. D. [*design bankrupt*],

Humbly sheweth—

That the petitioner is a creditor of the said C. D. to the extent of £ , conform to oath and account [or otherwise] produced.

That the said C. D. has been rendered notour bankrupt within the last four months, and still remains in a state of notour bankruptcy, and has within a year before the date of the presentation hereof resided and had a place of business in Scotland, and is subject to the jurisdiction of the Supreme Courts of Scotland.

That in order to realise the estates of the said C. D. for behoof of his creditors, the petitioner is under the necessity of applying to your Lordship for sequestration of his estates, in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.*

May it therefore please your Lordship to grant warrant for citing the said C. D. to appear before your Lordship on such induciæ as your Lordship may appoint to shew cause why sequestration of his estates should not be awarded; to direct intimation of said warrant and of the diet of compearance to be made in the *Edinburgh Gazette;* to grant diligence for the recovery of evidence of the notour bankruptcy of the said C. D. and of the other facts necessary to be established; and on again considering this petition, to award sequestration of the estates which now belong or which shall hereafter belong to the said C. D. before the date of his discharge; and to declare

* Should an interim factor be desired to preserve the estate pending trustee's appointment, insert here shortly a statement of the reasons for same, such as—The whole [or a considerable part] of bankrupt's estate consists of goods requiring immediate realisation and sale, and the appointment of a judicial factor is therefore necessary for the preservation and disposal of same. These goods consist of [specify]. The petitioner would respectfully suggest Mr. [design] as a suitable and proper person for the office,

the said estates to belong to his creditors for the purposes of said statutes; and to appoint a meeting of the said creditors to be held within on day of , at o'clock noon [*Note.*—These blanks are never filled in], to elect a trustee on the estates of the said C. D., or trustees in succession, and commissioners, and to do the other acts provided by the said statutes; also to remit to the Sheriff of the County of to proceed in manner mentioned in said statutes;* or to do otherwise in the premises as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

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2. Petition by Creditor for Sequestration of a Co-partnery and Individual Partners.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [*design creditor*], a creditor of C. D. & Co., and E. F. and G. H. [*design firm and individual partners*], the individual partners of said firm as partners thereof and as individuals, to the extent required by law,

Humbly sheweth—

That the petitioner is a creditor of the said C. D. & Co., and of the said E. F. and G. H., the individual partners of said firm, to the extent of £ , conform to oath and account [or otherwise] produced.

That the said C. D. & Co. have been rendered notour bankrupt within the last four months, and still remain in a state of notour bankruptcy, and have within a year before the date of the presentation of this petition carried on business in Scotland, and the said E. F. and G. H., the individual partners of said firm, have resided or had dwelling-houses in Scotland within said period, and the said company and individual

* If factor wanted insert here—And further, to nominate and appoint the said , or such other suitable person, as judicial factor on said estates in the meantime, and until a trustee shall be confirmed thereon, with the usual powers, including power to realise perishable estate, he always finding caution before extract.

partners are subject to the jurisdiction of the Supreme Courts of Scotland.

That in order to realise the estates of the said C. D. & Co., and the said E. F. and G. H. as partners foresaid, for behoof of their creditors, the petitioner is under the necessity of applying to your Lordship for sequestration of their estates in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

[If a judicial factor is desired, insert here the reasons as in preceding form.]

May it therefore please your Lordship to grant warrant for citing the said C. D. & Co. and E. F. and G. H. to appear before your Lordship on such inducie as your Lordship may appoint, to shew cause why sequestration of their estates should not be awarded: to direct intimation of said warrant and of the diet of compearance to be made in the *Edinburgh Gazette;* to grant diligence for the recovery of evidence of the notour bankruptcy of the said C. D. & Co. and E. F. and G. H., and of the other facts necessary to be established; and on again considering the petition, to award sequestration of the estates which now belong, or which shall hereafter belong, to the said C. D. & Co. as a company, and to the said E. F. and G. H. as partners thereof and as individuals, before the date of their discharge; and to declare the said estates to belong to their creditors for the purposes of said statutes; and to appoint a meeting of said creditors to be held within on the day of 19, at o'clock noon, to elect a trustee on the estates of the said C. D. & Co. and E. F. and G. H., or separate trustees, or trustees in succession, and commissioners, and to do the other acts provided by the said statutes; also to remit to the Sheriff of the county of to proceed in manner mentioned in said statutes [if a factor be desired, insert crave here as in preceding form]; or to do otherwise in the premises as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

3. Petition by a Creditor (not necessarily the Creditor petitioning for Sequestration) for Appointment of Judicial Factor pending Trustee being Elected.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [*design*],

Humbly sheweth—

That on [date] a petition was presented to your Lordship by [name and design petitioning creditor] for sequestration of the estates of [name and design bankrupt] in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

That on [date] your Lordship pronounced the following deliverance on said petition [quote first or second deliverance according to the stage of the sequestration proceedings].

That the petitioner is a creditor of the said [bankrupt] to the extent of £ . . , conform to oath and state of debt herewith produced.

That the whole [or a portion] of the estates of the said [bankrupt] consists of perishable goods, the same being composed of [state nature of goods], and it is necessary that a judicial factor should be appointed to look after and realise said goods.

The petitioner would respectfully suggest Mr. C. D., chartered accountant in Edinburgh, as a suitable person for the office.

May it therefore please your Lordship to appoint the said C. D., or such other person as your Lordship shall consider proper, to be judicial factor on the said estates in the meantime, and until a trustee shall be elected and confirmed thereon with the powers necessary for the interim preservation of the said estates, including power to recover debts, uplift sums of money, and sell perishable stock, he always finding caution before extract, all in terms of sec. 16 of the Bankruptcy (Scotland) Act, 1856.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

4. Petition by Creditor for Sequestration of Estate of Deceased Debtor who has died Notour Bankrupt, such Notour Bankruptcy having been created by a charge expired within four months.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of , a creditor of the deceased , to the amount required by law,

Humbly sheweth—

That the petitioner is a creditor on the estate of the said deceased to the extent of £ , conform to oath of verity of the said debt and state of debt and vouchers herewith produced, and desires that sequestration of the estates of the said deceased should be awarded in terms of the Bankruptcy (Scotland) Act, 1856, and relative Acts explaining and amending the same.

That the said [design] at the time of his death, which occurred on or about , resided at in Scotland, and was subject to the jurisdiction of the Supreme Courts of Scotland.

That and are the next of kin and successors [or otherwise, state relationship or title] of the said deceased; [or if deceased has left trustees, narrate appointment and declinature to act, or otherwise].

That the said was at the time of his death notour bankrupt.

May it therefore please your Lordship to grant warrant to macers and messengers-at-arms to cite the said and [representatives] to appear before your Lordship on such induciæ as your Lordship may direct, to shew cause why sequestration of the estates of the said deceased should not be awarded; to direct intimation of the said warrant and of the diet of compearance to be made in the *Edinburgh Gazette;* and also to grant diligence for recovery of evidence of the notour bankruptcy of the said deceased and of the other facts necessary to be established; and thereafter, on resuming consideration of this petition, to award sequestration of the estates which belonged to the said deceased at the date of his death, and to declare the same to belong

to his creditors for the purposes of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same; and to appoint a meeting of the said creditors to be held within on the day of at o'clock noon, to elect a trustee on the estates of the said deceased or trustees in succession and commissioners, and to do the other acts provided by the said statutes; also to remit to the Sheriff of the county of at to proceed in the manner mentioned in said statutes; [if factor be desired *ad interim* include crave as on page 389]; further, to ordain the said and [representatives] or any successor who has made up a title to, or is in possession of the estate, to convey any part of the said deceased's property which is in their possession to the trustee to be appointed by his creditors; or to do otherwise in the premises as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

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5. Petition by a Creditor for Sequestration of Estate of Deceased Debtor who did not die Notour Bankrupt, with Crave for Interim Factor.

Unto the Honourable the Lord Ordinary officiating on the Bills.

Petition of A. B., a creditor of the deceased to the extent required by law,

Humbly sheweth—

That the said [debtor] was, at the time of his death, which happened at on or about the day of , subject to the jurisdiction of the Supreme Courts of Scotland.

That the petitioner was a creditor of the said [debtor] at the time of his death, to the extent of £ and the said debt is still resting owing to the petitioner, conform to oath and bond and disposition in security and assignation thereof to the petitioner herewith produced.

That the said [debtor] left a trust disposition and settlement appointing his trustees and

executors, and that the said [widow, one of the trustees] and the children of the said [debtor] are the sole beneficiaries under said deed of settlement. The said trustees entered upon the management and administration of the trust estate, but made up no title to the moveable estate by confirmation, They have not, however, paid any of the creditors of the said [debtor].

That at the time of his death the said [debtor] was possessed of property in Scotland, and resided and carried on business at in the county of and was then owner of heritable property in Scotland, all as deponed to in the oath accompanying this petition.

That in order to realise the estates of the said [debtor] for behoof of his creditors, the petitioner is under the necessity of applying to your Lordship for sequestration of his estates, in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

That the petitioner desires the immediate appointment of a judicial factor to take possession of the estate and collect the rents thereof. This is urgently required in consequence of the said trustees and executors of the said [debtor] having, against the wishes and without any arrangement with the creditors, and to their serious prejudice, renounced a lease of premises in Street, which formed a valuable part of the estate. The said [debtor] had, for a considerable sum, purchased from a former lessee his rights in the lease, and had obtained from a lease in his own favour. This lease was renewed to his trustees for the period from to . The ground on which the said buildings were erected belongs to the said , and the buildings thereon were erected by the predecessor of the said [debtor], and belonged to the latter by purchase as aforesaid.

[Here follows a statement that the widow carried on the business without paying anything to the trustees by way of rent or otherwise.]

It thus becomes necessary that a judicial factor be appointed to collect the rents now coming due, and to protect generally the estate of the deceased and the interests of the creditors.

May it therefore please your Lordship to grant warrant for citing the said [trustees and executors] to appear before your Lordship on such induciæ as your Lordship may direct, to shew cause why sequestration

of the estates of the said deceased [debtor] should not be awarded; to direct intimation of the said warrant and of the diet of compearance to be made in the *Edinburgh Gazette*; and on again resuming consideration of this petition, to award sequestration of the estates of the said deceased [debtor] belonging to him at the time of his death, and to declare the said estates to belong to his creditors for the purposes of the said statutes, and to appoint a meeting of the said creditors to be held within on the day of at o'clock noon to elect a trustee on the estates of the said deceased [debtor], or trustees in succession, and commissioners, and to do the other acts provided by the said statutes; also to remit to the Sheriff of the county of at to proceed in the manner mentioned in said statutes; and further, to nominate and appoint [here name and design suggested factor], or such other suitable person as judicial factor on the said estates, until a trustee shall be elected and confirmed thereon, with the usual powers, he always finding caution before extract: Further, to ordain the said , the trustees and executors foresaid, or any successor who has made up a title to, or is in possession of the estate, to convey any part of the said deceased's property which is in their possession to the trustee to be appointed by his creditors; or to do otherwise in the premises as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

The first deliverance on above petition ordered citation and advertisement as craved. The second deliverance was as follows:—"The Lord Ordinary, having resumed consideration of the petition, with the writs produced, together with a minute now given in for the petitioner, execution of intimation, copy of the *Edinburgh Gazette* and other productions made therewith, no appearance being made for the successors of the after-designed [debtor], sequestrates the estates and effects of the said deceased [debtor, designed], in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, and declares the same to belong to his

creditors for the purposes of the said Acts: Ordains Mrs. or any successor who has made up a title to, or is in possession of the estate of, the said deceased [debtor] to transfer the same, so far as liable for the debts of the deceased, to the trustee to be elected by his creditors: Appoints the creditors to hold a meeting at the time and place mentioned in the said minute, viz., on the day of at o'clock noon, within to elect a trustee or trustees in succession and commissioners as directed by the statute, and remits to the Sheriff of the county of at , where the said meeting is to be held, to proceed in manner mentioned in said statutes: Further, appoints to be judicial factor on said estates and effects in the meantime, and until a trustee has been elected and confirmed thereon, with all the powers conferred by the statute, including the power to recover debts and realise perishable estate, he always finding caution before extract; and decerns."

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6. Petition by Creditors for Sequestration of Executry Estate, in respect of Notour Bankruptcy having been constituted against Executor-Dative *qua* Executor-Dative.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. & Co. and the individual partners of said company, creditors of as executor-dative of the deceased , conform to decree and confirmation following thereon by the Sheriff of , to the extent required by law,

Humbly sheweth—

That the petitioners were creditors of the said deceased , and as his executor, the said , disputed the accuracy of the petitioners' claim, an action was raised against him to constitute the said claim, and after sundry procedure the petitioners obtained decree for the amount of their debt against the said as executor foresaid.

That the petitioners are creditors of the said as executor-dative of the deceased above designed to the extent

of £ , conform to extract decree and oath herewith produced.

That the amount of said executry estate to which the said as executor foresaid was confirmed is £ , and the whole of said estate has been realised by him.

That the said , as executor-dative foresaid, has been rendered notour bankrupt within the last four months, and as such executor still remains in a state of notour bankruptcy, and has within a year before the date of the presentation of this petition resided or had a dwelling-house or place of business in Scotland, and is subject to the jurisdiction of the Supreme Courts of Scotland.

That in order to realise the estates of the said as executor foresaid for behoof of his creditors as such executor, the petitioners are under the necessity of applying to your Lordship for sequestration of said executry estates and of the estates of the said as executor foresaid, in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

May it therefore please your Lordship, on considering this petition, with the decree and oath produced, to grant warrant for citing the said as executor foresaid to appear before your Lordship on such induciæ as your Lordship may appoint to shew cause why sequestration of said executry estates and of his estates as executor foresaid should not be awarded: also to direct intimation of the said warrant and of the diet of appearance on such induciæ to be made in the *Edinburgh Gazette;* and to grant diligence to recover evidence of the notour bankruptcy of the said as executor foresaid, or other facts necessary to be established: And on again considering this petition, to award sequestration of the executry estates of the said deceased and the estates which now belong or shall hereafter belong to the said as executor foresaid before the date of his discharge, and to declare the said estates to belong to the creditors of the said as executor foresaid

for the purposes of said statutes; and to appoint a meeting of the said creditors to be held on a day and hour to be afterwards fixed to elect a trustee on said executry estates and the estates of the said
as executor foresaid, or trustees in succession and commissioners; and to do the other acts provided by the said statutes; also to remit to the Sheriff of at
to proceed in manner mentioned in said statutes.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioners.]

The first deliverance ordered citation and advertisement, and granted diligence in ordinary form. The second deliverance awarded sequestration in the following terms:—"The Lord Ordinary, having resumed consideration of the petition, with productions made therewith, and other writs, no appearance being made for the successors of the after-designed
deceased, sequestrates the executry estates of the said deceased
and the estates now belonging or which shall hereafter belong to as executor-dative of the said
in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, and declares the same to belong to their creditors for the purposes of the said Acts: Ordains the said
as executor-dative foresaid or any successor who has made up a title to or is in possession of the estate of the said deceased to transfer the same, so far as liable for the debts of the deceased, to the trustee to be appointed on said sequestrated estates: Appoints the creditors to hold a meeting," &c.

7. Petition by a Mandatory with Concurrence of Next-of-Kin for Sequestration of Estate of a Deceased Debtor who had prior to his Death granted a Mandate to apply for Sequestration.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B., mandatory of the deceased C. D., conform to mandate produced, with concurrence of E. F., G. H., and I. J., the only children and heirs and successors of the said deceased C. D.,

Humbly sheweth—

That the said C. D. deceased was at the time of his death, which happened on the day of , 19 , subject to the jurisdiction of the Supreme Courts of Scotland.

That in order to wind up his affairs the said C. D. granted a mandate to the petitioner to apply for sequestration of his estates, in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, which mandate is herewith produced and founded on.

That in conformity with said mandate, the petitioner makes this application to your Lordship for sequestration under the said statutes.

May it therefore please your Lordship, on considering this petition, with the mandate produced, to award sequestration of the estates of the said deceased C. D. at the time of his death, and to declare the same to belong to his creditors for the purposes of said statutes; further, to ordain any successor who has made up a title to or is in possession of the estate of the said deceased to transfer the same, so far as liable for the debts of the deceased, to the trustee to be elected by his creditors, and to appoint a meeting of the said creditors to be held on the day of , at o'clock, within to elect a trustee, or trustees in succession, and commissioners upon the said C. D.'s sequestrated estates, and do the other acts provided by said statutes; further, to remit the process of sequestra-

tion to [Sheriff of county where meeting is to be held] to proceed in manner mentioned in said statutes.

[Signed by Mandatory, also by three concurring persons, or by a Counsel on their behalf.]

INTERLOCUTOR.

EDINBURGH, 19 .—The Lord Ordinary, having considered the petition, with the writs produced, sequestrates the estates and effects of C. D. now deceased, in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, and declares the same to belong to his creditors for the purposes of the said Acts: ordains any successor who has made up a title to or is in possession of the estates of the said deceased C. D., to transfer the same, so far as liable for the debts of the deceased, to the trustee to be elected by his creditors; appoints the creditors to hold a meeting at the time and place mentioned in the petition, viz., on the at o'clock within to elect a trustee, or trustees in succession, and commissioners, as directed by the statute, and remits to the Sheriff of , where the said meeting is to be held, to proceed in manner mentioned in said statutes.

Note.—In this petition, there being no minute required, the time and place of meeting should be inserted in the prayer.

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8. MINUTE CRAVING AWARD OF SEQUESTRATION.

Minute for in Petition at his instance for sequestration of the estates of .

That in terms of your Lordship's deliverance, dated the day 19 the said was duly cited to appear within the period specified in said deliverance to shew cause why sequestration of his estates should not be awarded, conform to execution of citation herewith produced.

That, further, the petitioner, in terms of said deliverance, inserted a notice in the *Edinburgh Gazette*, of date the , intimating the said deliverance and the diet of appearance, as is shewn in copy of said *Gazette* herewith produced. No appearance has been made for the said .

That evidence is produced of the notour bankruptcy of the said and of the other facts necessary to be established.

Your Lordship is therefore craved, on considering the original petition, to award sequestration of the estates now belonging or which shall hereafter belong to the said before the date of his discharge, and to declare the same to belong to his creditors for the purposes of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same; and to appoint a meeting of the said creditors to be held on the day of 19 at o'clock noon within to elect a trustee on the estates of the said or trustees in succession, and commissioners, and to do the other acts provided by the said statutes; and further, to remit to the Sheriff of the county of to proceed in manner mentioned in said statutes.

In respect whereof.

[Signed by Counsel, Agent, or Petitioner.]

Note.—The above Minute does not bear a preliminary address, "Unto the Honourable the Lord Ordinary officiating on the Bills."

9. Petition by a Bankrupt, with Concurrence, for Sequestration of his Estates.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [*design*], with the concurrence of C. D. [design concurring creditor], a creditor of the said A. B. to the extent required by law,

Humbly sheweth—

That the petitioner is subject to the jurisdiction of the Supreme Courts of Scotland.

That the affairs of the petitioner have become embarrassed, and he is therefore under the necessity of applying to your Lordship for sequestration of his estates.

That the said C. D., who concurs in this application, is a creditor of the petitioner to the extent of £ , conform to oath and state of debt herewith produced.

That the present application is made under the provisions of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

May it therefore please your Lordship to award sequestration of the estates which now belong or shall hereafter belong to the petitioner before the date of his discharge, and to declare the said estates to belong to his creditors for the purposes of the said statutes: and to appoint a meeting of the creditors, to be held within on the day of at o'clock noon, to elect a trustee on the estates of the petitioner, or trustees in succession, and commissioners, and to do the other acts provided by the said statutes; and also to remit to the Sheriff of the county of to proceed in manner mentioned in said statutes; or to do otherwise in the premises as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner, but *not* by the concurring creditor.]

Note.—The blanks in above prayer should be filled in.

10. Petition by a Partner of a Firm, with Concurrence of Partnership Creditor, where other Partners have Deserted Firm, for Sequestration of Firm's Estates.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. & Company, Manufacturers, Street, Glasgow, with concurrence of C. D., a creditor of the said A. B. & Company to the extent required by law,

Humbly sheweth—

That the said A. B. & Company are subject to the jurisdiction of the Supreme Courts of Scotland. That the affairs of the said A. B. & Company having become embarrassed, they are under the necessity of presenting this petition for sequestration of their estates.

That E. F., on whose mandate the petition is presented, is the only partner of the firm in this country, and the only acting partner of the firm. He only is available and entitled to act on behalf of the firm. The other original partners, viz. [specify and design], have deserted the business and gone to with the intention of remaining there and taking no further part in the business. Since leaving this country on [date or dates] they have not taken any part in the conduct of the business. They are believed to be in other employments or situations and are in breach of the contract of copartnery.

That the said C. D., who concurs in this application, is a creditor of the petitioners to the extent of £ , conform to oath and account herewith produced.

That the total liabilities of the firm amount to about £ .

That the present application is made under the provisions of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

May it therefore please your Lordship to award sequestration of the estates which now belong, or which shall hereafter belong, to the said A. B. & Company before the date of their discharge; and to declare the same to belong to the creditors of the said A. B. & Company for the purpose of said statutes; and to appoint a meeting of the creditors to be held on the day of at o'clock noon,

within , to elect a trustee on the estates of the said A. B. & Company, or trustees in succession, and commissioners, and to do the other acts provided by the said statutes; or to do further or otherwise in the premises as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Agent in terms of mandate.]

Note.—The above exceptional application is referred to under "Mandate," page 363. The petitioner granted two mandates in the following terms:—

[1]

To

S.S.C.,

Edinburgh.

I, E. F., residing at , a partner of the firm of A. B. & Company, Manufacturers, Street, Glasgow, and the sole partner of said Company resident in Great Britain, authorise you to apply for sequestration of the estates of the said firm under the Bankruptcy statutes.

[Signed] E. F. [Date.]

[2]

To

S.S.C.,

Edinburgh.

We, A. B. & Company, Manufacturers, Street, Glasgow, as a Company, authorise you to apply for sequestration of our estates under the Bankruptcy statutes.

[Signed] A. B. & Company. [Date.]

The application was at first refused as being an act outside the scope of a partner's powers; but as it was found that the absent partners had left powers of attorney behind them, intimation of the petition to the agents or attorneys was ordered as follows:—

The Lord Ordinary appoints a copy of the petition and of this deliverance to be served upon the known agents or attorneys in the United Kingdom of [deserting partners], the partners of the firm of A. B. & Company who are mentioned in the petition as having left this country, that they may compear if so advised within four days after intimation.

The petition having been duly intimated, or intimation having been accepted by the known agents or attorneys of the absent partners, a minute was lodged in form similar to that used in a petition by a creditor, craving an award of sequestration, and the award followed in these terms:—

The Lord Ordinary, having resumed consideration of the petition, together with a minute now given in for the petitioners, and acceptance of intimation by the attorneys for [absent partners], sequestrates the estates now belonging, or which shall hereafter belong, to the petitioners A. B. & Company, &c., before the date of their discharge, and declares the same to belong to their creditors for the purposes of the Bankruptcy (Scotland) Act, 1856, &c.

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11. Petition by Executors, with Concurrence of a Creditor, for Sequestration of Executry Estate.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A., B., and C., executors-dative of the deceased , with the concurrence of D., a creditor of the petitioners, as executors foresaid to the extent required by law,

Humbly sheweth—

That the petitioners are executors-dative *qua* next-of-kin of the said deceased , conform to decree-dative in their favour by the Sheriff of , dated and confirmation following thereon in favour of the petitioners, dated .

That the petitioners are subject to the jurisdiction of the Supreme Courts of Scotland.

The executry estate of the deceased , confirmed to by the petitioners, consisted of [details of estate].

That no part of said executry estate has yet been realised by the petitioners, and shortly after confirmation was issued in their favour, an action was raised at the instance of against the petitioners as executors foresaid for payment of the sum of £ with interest. Upon the dependence of said action the said on last used arrestments in the hands of .

In addition to the sums claimed in said action, accounts have been incurred by the petitioners on behalf of the executry estate for funeral expenses, expenses of management, and in connection with the litigation referred to. These accounts in all amount to over £ .

That there is, accordingly, a considerable deficiency of said executry estate to meet the various claims upon it, and the present application has been rendered necessary for sequestration of the said executry estate and of the petitioners *qua* executors foresaid.

That the said D., who concurs in the present application, is a creditor of the petitioners as executors foresaid to the extent of £ , conform to oath and account herewith produced.

That the present application is accordingly made under the provisions of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

May it therefore please your Lordship to award sequestration of the executry estates of the said , and of the estates which now belong, or which hereafter shall belong, to the petitioners as executors foresaid before the date of their discharge, and to declare the said estates to belong to the creditors of the petitioners as executors foresaid for the purposes of said statutes; and to appoint a meeting of the creditors to be held on the day of , at o'clock , within , to elect a trustee on said executry estates and the estates of the petitioners as executors foresaid, or trustees in succession, and commissioners, and to do the other acts provided by the said statutes; and also to remit to the Sheriff of , at , to proceed in manner mentioned in said statutes; or to do otherwise in the premises as to your Lordship shall seem just.

According to Justice, &c.

12. Petition by a Creditor for Recall.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The petition of

a creditor of

Humbly sheweth—

That of this date the said petitioner, a creditor of the said to the extent required by law, presented a petition to your Lordship for sequestration of the estates of the said under the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, upon which petition your Lordship pronounced a deliverance of this date, granting warrant to cite the said to appear in Court on the seventh day next after citation, if within Scotland, and on the twenty-first day next after citation if furth of Scotland, to shew cause why sequestration of his estates should not be awarded, and directing intimation of the warrant and of the diet of appearance to be published in the *Gazette*, and further, granting diligence to recover evidence of notour bankruptcy, and of the other facts necessary to be established, and commission to to take the oaths of witnesses and havers in common form, and further, nominating and appointing to be judicial factor on the said estates of the said until a trustee should be confirmed thereon, with the usual powers, the said factor finding caution before extract.

That of this date the said petition and warrant of citation were served upon the said by posting at the General Post Office, Edinburgh, a full double of said petition and of the deliverance thereon to him, with citation subjoined, in a registered letter addressed as follows:

[Quote].

That of this date the said [factor] found caution and extracted his warrant of appointment as judicial factor, and entered into possession of said estate.

That of this date a notice was inserted in the *Edinburgh Gazette* intimating the petition, warrant for citation of the said , and the diet of appearance.

That of this date the said [debtor] lodged a minute in process to the effect that, having granted no preferences in favour of any of his creditors, and with the view of avoiding unnecessary expense, he had granted a trust deed on , but that, in consequence of this petitioner's action in applying to your Lordship for sequestration of his estates, the minuter had on with the concurrence of , a creditor, presented a petition for sequestration of his estates in the Sheriff Court at and, on the same day, sequestration was awarded of his estates, which was duly advertised in the *Edinburgh Gazette* in terms of the Bankruptcy Act, and a meeting of creditors fixed to take place on at o'clock noon in the Hotel for the purpose of electing a trustee and commissioners on the said sequestrated estates. The said minute is referred to.

The said trust deed was not intimated to this petitioner, or to the other creditors of the said prior to the date of presenting of his petition for sequestration. This petitioner's petition for sequestration, and the appointment of a judicial factor, were intimated verbally by the judicial factor to the debtor and his agent, Mr. , on . Neither the debtor nor his said agent intimated the existence of the trust deed referred to in the minute.

The service of the Court of Session petition could not be effected until Monday . Notwithstanding the service of the petition on that date, the debtor's agent, the said , called a meeting of creditors to give instructions as to whether the estate should be wound up under a trust deed or under sequestration. The circular calling the meeting is dated , being the day following that on which service was made on the debtor, and a copy of same is herewith produced. The meeting was called without the authority of the judicial factor, and was held in on the day of . At that meeting, after some explanations were given as to the estate, the creditors considered that it would be for their interest that the sequestration proceedings should go on, whereupon the debtor's said agent intimated that the debtor had himself applied for sequestration in the Sheriff Court at , that the same had been granted on that forenoon, and that the *Gazette* notice had been duly inserted.

In view of this petitioner's application for sequestration in the Bill Chamber, the proceedings in the Sheriff Court

were quite uncalled for and unnecessary. The creditor concurring in the debtor's petition is a person conjunct and confident with the debtor, being [state relationship], and her claim is insufficiently vouched.

There are no creditors of the said —— resident at , where, under the Sheriff Court proceedings, a meeting is proposed to be held, and this petitioner, in lodging his petition and asking a remit to the Sheriff Court at was acting in concurrence with a majority in number and value of the whole creditors.

This petitioner believes and avers that the debtor has granted, or attempted to grant, preferences to certain of his creditors, and that others have been endeavouring to acquire preferences for themselves by the use of diligence, and, in view of such preferences being sought, it is of the utmost importance that the date of the deliverance first granted should be held to rule the proceedings. The first deliverance on this petitioner's petition was earlier by six days than that on the debtor's petition.

May it therefore please your Lordship to appoint this petition and the deliverance hereon to be served on the said and [the debtor and his concurring creditor] and to require them to lodge answers within a specified short time, and also to order a notice of presentation of this petition to be published in the *Edinburgh Gazette*, and on expiration of the induciæ, with or without answers, to pronounce judgment recalling the sequestration awarded in the Sheriff Court of on ; to appoint the judgment of recall to be entered in the Register of Sequestrations and on the margin of the Register of Inhibitions, all in terms of sec. 31 of the Bankruptcy (Scotland) Act, 1856, and to find the said and jointly and severally liable to this petitioner in the expenses of this application and procedure following hereon ; or to do otherwise in the premises as to your Lordship shall seem proper.

According to Justice, &c.

The first deliverance ordered intimation, service, and advertisement.

The second deliverance recalled as craved, with expenses.

13. Petition for Recall of Sequestration of an Executry Estate and of the Sequestration of the Executors *qua* Executors on the Ground that Debt of Concurring Creditor was due by Executors as Individuals.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of [creditor],

Humbly sheweth—

That on the day of a petition at the instance of and , executors-dative of the deceased , was presented to your Lordship, praying your Lordship to award sequestration of the executry estate of the said deceased , which then belonged or which should thereafter belong to the said petitioners as executors foresaid, for the purposes of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, in which petition your Lordship on awarded sequestration of the said estate.

That the petitioner is a creditor of the said deceased to the amount of £ , conform to oath herewith produced.

That the said and , as executors-dative of the said deceased , were the parties appointed by the Court with the legal title to administer his estate, and were possessed of no separate estate and no separate *persona* capable of being sequestrated apart from the estate of the said deceased.

That the said petition was incompetent, in respect that the concurring creditor was not and never has been a creditor of the deceased , or of the said executors as such.

That the said [executors] having procured themselves confirmed as executors foresaid, were bound to administer the estate according to law, and could not by an application for sequestration of themselves as executors-dative divest themselves of their office.

That it is believed and averred that by their application for sequestration the said [executors] desire to give certain personal creditors of their own a ranking on funds which belonged to the said deceased .

That the said sequestration should therefore be recalled, in terms of the 31st section of the Bankruptcy (Scotland) Act, 1856.

May it therefore please your Lordship to order a copy of this petition, and of the deliverance hereon, to be served upon the said and [executors] and on [concurring creditor], and to require them to lodge answers hereto within a specified short time; and to order a notice of the presentation of this petition to be published in the *Edinburgh Gazette;* and on the expiration of the time so fixed, with or without answers, to recall the said sequestration, and to order the judgment of recall to be entered in the Register of Sequestrations and on the margin of the Register of Inhibitions.

According to Justice, &c.

The first deliverance ordered intimation and service as craved.

The second deliverance recalled sequestration (on the ground of concurring creditor's claim being personal and not executry), ordered marking on registers, and found the executors liable in expenses as individuals.

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14. Petition by Bankrupt for Recall of Sequestration under Sec. 32 of the Bankruptcy (Scotland) Act, 1856.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [bankrupt], with consent of [here insert names and designations of concurring creditors],

Humbly sheweth—

That of this date [date], on the petition of C. D. [design], the estates of the said A. B. were sequestrated by [here insert the Lord Ordinary or the Sheriff, as the case may be] who appointed a meeting of creditors to elect a trustee. That of this date [date], the Sheriff of confirmed E. F. [design] trustee on the said sequestrated estates.

That the said [here again insert concurring creditors' names] were the sole creditors who lodged claims with the said trustee on said sequestrated estate, and were ranked for their claims thereon [or state that the creditors concurring in the petition form nine-tenths in number and value of those ranked] and are consenters to the petition.

The present application is made under sec. 32 of the Bankruptcy (Scotland) Act, 1856.

May it therefore please your Lordship to appoint this petition and deliverance to be served on the said C. D., as trustee on the said sequestrated estates, and to require him to lodge answers within fourteen days; and also to order a notice of said deliverance to be published in the *Edinburgh Gazette* requiring all concerned to appear within fourteen days from the date of the publication, to shew cause why the sequestration should not be recalled, and on expiration of the time, with or without answers, to pronounce judgment recalling the sequestration, to appoint the judgment of recall to be entered in the Register of Sequestrations and on the margin of the Register of Inhibitions, all in terms of sec. 32 of the said Bankruptcy (Scotland) Act, 1856; or to do otherwise in the premises as to your Lordship shall seem proper.

According to Justice, &c.

PROCEDURE.

Service and advertisement in *Gazette*.
On expiry of induciæ,
Grant (or refuse, as the case may be).

Note.—The 32nd section allows *creditors* to petition for recall outwith the forty days. In above case recall was granted on bankrupt's application with concurrence of creditors.

15. Dismissal of Petition and Recall of Interim Factory by Joint Minute.

Joint Minute in Petition of A. B. for sequestration of the estates of C. D.

for the petitioning creditor and for the debtor concurred in stating that the debt founded on in the petition had been discharged: [that the parties desired that the appointment of as judicial factor *ad interim* on the estate of the said debtor made by interlocutor of should now be recalled and warrant granted to the Clerk of the Bills for delivery of his bond of caution] and that the parties craved that the petition for sequestration should be dismissed and authority granted to the Keeper of the Register of Inhibitions to mark such dismissal on the margin of the said register.

[Signed by Counsel or Agents for the parties.]

Interlocutor following on Joint Minute.

Edinburgh, .—The Lord Ordinary, in respect of the joint minute for the parties No. of process, recalls the appointment of Mr. as judicial factor *ad interim* on the estates of designed in the petition, and grants warrant to the Clerk of the Bills to deliver up his bond of caution on production of a certified copy of this interlocutor; dismisses the petition for sequestration of the estates of the said and authorises the Keeper of the Register of Inhibitions to mark the dismissal of the petition on the margin of the said register on production of a certified copy of this interlocutor; and decerns.

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16. Minute by Creditor Opposing Dismissal of Petition in respect of Joint Minute lodged by Petitioning Creditors and Debtor.

Minute for A. B., a creditor of C. D. to the extent required by law.

for the said creditor stated that since the date of the first deliverance on the petition by E. F. for sequestration of the estates of the said C. D., viz. [date], a joint minute

had been lodged for the said petitioning creditor and the debtor craving the dismissal by the Court of the said petition.

That this minuter is a creditor of the said C. D. to the extent required by law as shewn by oath and state of debt herewith produced; and he desires to be sisted as a party in the instance of the said petition along with, or in room and in place of, the said E. F.

That the minuter opposes the dismissal of the petition as craved in said joint minute.

The Court is therefore craved to refuse such dismissal, and to sist the minuter accordingly.

[Signed by Counsel or Agent; or if by party, alter the minute at commencement to "A. B., the creditor above-named, stated to the Court, &c."]

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17. Forms in Application for Winding-up under Secs. 35 to 40 of Act of 1856, to be presented within Four Days after Meeting.

(*a*) Sheriff Court petition by bankrupt or person appointed by creditors.

In the Sheriff Court of the Lothians and Peebles.

Unto the Honourable the Sheriff of the Lothians and Peebles.

The application of

Humbly sheweth—

That at a meeting of the creditors on the estate of duly convened in terms of the Bankruptcy (Scotland) Act, 1856, and held within on the day of at o'clock noon, a majority in number and four-fifths in value of the creditors present, or represented, at said meeting resolved that the estates of the said ought to be wound up under a deed of arrangement.

The said meeting further resolved that an application should be presented to your Lordship to sist procedure in the sequestration for a period not exceeding two months, and appointed the said [the bankrupt, or other person appointed] to report the said resolution to your Lordship, and to apply for a sist of the said sequestration.

That the petitioner accordingly reports the said resolution to your Lordship as set forth in the minute of meeting, bearing date , which is signed by the preses, and is produced herewith; and he prays your Lordship

To find that the said resolution was duly carried, and to sist procedure in the said sequestration for a period not exceeding two months; or to do further or otherwise in the premises as to your Lordship shall seem proper.

According to Justice, &c.

[Signed by bankrupt or other applicant, or by Counsel or Agent.]

INTERLOCUTORS FOLLOWING ON PETITION.

(1) EDINBURGH, .—The Sheriff-Substitute, having considered the foregoing petition, with the productions, finds that the resolution to sist procedure, referred to in the petition, was duly carried, and that this application is reasonable; sists further procedure in the sequestration for a period of sixty days from , the date of the meeting of creditors at which said resolution was carried.

(2) EDINBURGH, .—The Sheriff-Substitute, having considered the deed of arrangement produced, appoints intimation of the production thereof and of this deliverance to be made by advertisement published in the *Edinburgh Gazette*, and also by circulars posted to every creditor claiming in the sequestration as set forth in the bankrupt's state of affairs, and who does not concur in the said deed of arrangement, requiring all parties claiming interest to appear within ten days from the date of such publication and posting to shew cause why the said deed of arrangement should not be approved of, and the sequestration at an end, with certification.

(3) EDINBURGH, .—The Sheriff-Substitute, having considered the deed of arrangement, minute of meeting of creditors, and other writs, and having seen the *Edinburgh Gazette* containing the intimation ordered by the last interlocutor, together with the certificate of posting of circulars to the creditors as therein directed, no appearance being made to oppose the approval of said deed of arrangement, finds that said deed of arrangement has been duly entered into and

executed, and is reasonable; approves of said deed of arrangement, and declares the sequestration of the estates of the said awarded on to be at an end, and allows an act and warrant to be extracted accordingly.

"Gazette" Notices in above Application.

(1) By trustee calling meeting of creditors to consider advisability of deed of arrangement.

In the sequestration of , trustee, hereby calls a general meeting of creditors of the above, to be held within on the day of at o'clock noon, for the purpose of considering, and, if thought fit, resolving that the estates of the said be wound up under a deed of arrangement in terms of the Bankruptcy (Scotland) Act, 1856.

[Place and date.] [Signed by trustee.]

(2) By bankrupt intimating application to Sheriff .

In the sequestration of ; Notice is hereby given that a deed of arrangement between the creditors of has been produced to the Sheriff of , who has appointed intimation thereof, requiring all parties having interest to appear within ten days from the date of notice to shew cause why the said deed of arrangement should not be approved of, and the sequestration declared at an end, with certification.

[Place and date.] [Signed by bankrupt.]

Note.—For intimating by circular, copies of above can be obtained on slips from the printers of the *Gazette*.

(*b*) Bill Chamber petition by bankrupt or person appointed by creditors.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of

Humbly sheweth—

That of this date the whole estates of the petitioner [or design bankrupt, if not petitioner] were sequestrated by your Lordship in terms of the Bankruptcy

(Scotland) Act, 1856, and Acts explaining and amending the same, conform to certified copy of the proceedings herewith produced.

That of this date a meeting was held within for the election of a trustee in the sequestration.

That at said meeting, a majority in number and four-fifths in value of the creditors present or represented resolved that the estates ought to be wound up under a deed of arrangement, and that an application should be presented to your Lordship to sist procedure in the sequestration for a period not exceeding two months, and appointed the petitioner to report the resolution to your Lordship, and to make the present application, all conform to minute of meeting of creditors, bearing date which is signed by the preses, and is produced herewith.

May it therefore please your Lordship to find that the said resolution was duly carried; that this application is reasonable; and to sist procedure in the said sequestration for a period not exceeding two months from the date of said meeting, viz., ; or to do further or otherwise as to your Lordship shall seem proper.

According to Justice, &c.

[Signed by Petitioner, Counsel, or Agent.]

Note.—Forms of deed of arrangement will be found in Goudy on Bankruptcy, appendix: also in Juridical Styles, vol. 1. This petition will be lodged in the original process.

[An appeal or reclaiming note against the judgment of the Sheriff-Substitute or the Lord Ordinary in proceedings, by way of deed of arrangement is competent, and in vacation an appeal from a Sheriff Court judgment may be dealt with by the Lord Ordinary on the Bills under sec. 170 of the Bankruptcy Act, 1856.]

A form of a printed appeal from the Sheriff Court is here given.

18. Form of Appeal against Judgment approving of Deed of Arrangement.

[Prefix title page and index as in an ordinary appeal. The documents will be printed in the order following.]

(1) Petition.

Unto the Honourable the Sheriff of

The Petition of , some time residing in and now at

Humbly sheweth—

That on the day of , 19 , the estates of the petitioner were sequestrated by the Lord Ordinary officiating on the Bills, by virtue of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, conform to the certified copy petition and deliverance thereon herewith produced.

That at a meeting specially called for the purpose, conform to copy of the *Edinburgh Gazette* of , 19 , herewith produced, and held within the chambers of Mr. , C.A., the trustee, at , on the day of , 19 , at o'clock noon, the creditors present or represented at said meeting resolved that the estate ought to be wound up under a deed of arrangement, and that an application should be presented to your Lordship to sist procedure in the sequestration for a period of two months, and that the said meeting then appointed the petitioner to report said resolution to your Lordship, and to apply for a sist of the sequestration in terms thereof, all conform to the minute of said meeting of creditors herewith produced.

May it therefore please your Lordship, on considering this petition, to find that the said resolution was duly carried, and that this application is reasonable, and to grant a sist of procedure in the said sequestration for a period of two months, all in terms of the said resolution, and of sec. 36 of the statute first above mentioned.

According to Justice, &c.

[Signed by Agent.]

(2) NOTICE OF APPEARANCE FOR .

In the Sheriff Court of at

Notice of appearance for in the application by some time residing in , and now at , and others, for approval of a deed of arrangement in the sequestration of the said , above designed, hereby enters appearance to oppose the approval of the said deed of arrangement.

[Signed by Agent.]

(3) INTERLOCUTORS.

, 19 .—The Sheriff-Substitute, having considered the foregoing petition, with the productions, finds that the resolution to sist procedure referred to in the petition was duly carried, and that this application is reasonable: Sists further procedure in the sequestration for a period of two months from this date.

19 .—The Sheriff-Substitute, having seen the deed of arrangement produced, before answer, appoints intimation of the production thereof and of this deliverance to be made by advertisement published in the *Edinburgh Gazette*, and also by circular posted to every creditor who does not concur in the said deed, requiring all parties interested who desire to oppose the approval thereof to lodge in the hands of the Clerk of Court a notice of appearance within seven days from the date of such publication or posting.

19 .—The Sheriff-Substitute, having considered the deed of arrangement No. of process and whole proceedings, and having heard counsel for the subscribers to the said deed, and for , a creditor of the bankrupt, Finds that the said deed of arrangement has been subscribed by or by authority of four-fifths in number and value of the creditors of the bankrupt: Finds that the said deed of arrangement has been duly entered into and executed, and is reasonable: Approves thereof, and declares the sequestration of the estates of the bankrupt, , awarded on 19 [the first deliverance being dated 19], to be at an end; and allows an act and warrant to go out and be extracted accordingly.

[Here follows Sheriff-Substitute's note.]

(4) Note of Appeal for .

[Prefix interlocutor and note of the Sheriff-Substitute.]

Unto the Right Honourable the Lords of Council and Session.

Note of Appeal for a creditor in the sequestration of .

Humbly sheweth—

That in the process of sequestration of the estates of the said , under the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, presently depending in the Sheriff Court of the Sheriffdom of , the Sheriff-Substitute was on the day of , 19 pleased to pronounce the deliverance above copied, which the appellant respectfully brings under the review of your Lordships, in terms of sec. 170 of the statute first above mentioned.

May it therefore please your Lordships to recall the deliverance complained of, find the appellant entitled to the expenses of process, both in your Lordships' Court and in the Sheriff Court; and to do otherwise as to your Lordships shall seem proper.

According to Justice, &c.

[Signed by Agent.]

, 19 .—Received of this date.

[Signed by Clerk of the Bills, &c.]

(5) Deed of Arrangement of the Affairs of Bankrupt.

[Here print Deed of Arrangement.]

(6) Affidavit and Claim for Creditor.

[Here print affidavit and claim of the creditor appealing.]

Note.—In above case the respondents moved in the Division for an order on appellant to print his record and relative documents within a short space of time. An order to print within eight days was pronounced. Such a course may be followed in any bankruptcy appeal, as no specified time for printing is given by statute; although, in practice, the rules laid down by Act of Sederunt of 1870 regarding ordinary Sheriff Court appeals have in the past been observed.

19. NOTE CRAVING DISMISSAL OF PETITION FOR SEQUESTRATION AND RECALL OF INTERIM FACTORY, IN RESPECT OF ARRANGEMENT MADE EXTRA-JUDICIALLY BY CREDITORS.

Unto the Honourable the Lord Ordinary officiating on the Bills.

Note for [original petitioners] and A. B., interim judicial factor appointed on the estates of [bankrupt],

In the petition at the instance of the said [original petitioners] for sequestration of the estates of the said [bankrupt],

Humbly sheweth—

That a petition for the sequestration of the estates of the said [bankrupt] was presented to your Lordship on .

That on your Lordship, having considered the petition, with the writs produced therewith, was pleased to pronounce an order for the service and intimation of the said petition, which order, *inter alia*, nominated and appointed the said A. B. to be judicial factor on the estates of the said [bankrupt] in the meantime, and until the petition for sequestration had been disposed of and a trustee elected and confirmed thereon with the usual powers, including power to recover debts and realise perishable estate, he always finding caution before extract.

That caution was duly found by the said A. B., and his bond of caution lodged with the Clerk of the Bills on or about [date]. The cautioner for the said A. B. is [design].

That on [date] a meeting of the creditors of the said [bankrupt] was held in Glasgow in the office of the said A. B., the interim factor, at which it was intimated that an offer had been made to purchase the business of the bankrupt, and that, subject to the approval of the creditors, the bankrupt had accepted of said offer, and had granted a mandate containing the terms in which the proceeds of the business should be divided among his creditors.

That the creditors having agreed to the disposal of the said business, the same was accordingly realised at the agreed-on price by C. D., solicitor in Glasgow, as representing all parties interested, and the proceeds thereof were divided among the creditors under the arrangement come to at said meeting. A copy of minute of said meeting is herewith produced.

That the said A. B., the judicial factor, has had no intromissions with the estate of the said bankrupt.

That in these circumstances this note is presented praying for recall of the appointment of the said A. B. as judicial factor *ad interim*, and for delivery of his bond of caution, and also to have the said petition for sequestration dismissed.

May it therefore please your Lordship to appoint this note to be served upon the said [bankrupt] and the said [cautioner] and also, if necessary, to be intimated to the Accountant of Court, and in such other way or manner as may be deemed necessary; and on resuming consideration hereof, with or without answers, to recall the appointment of the said A. B. as judicial factor foresaid; to grant warrant to the Clerk of the Bills to deliver up the said A. B.'s bond of caution, and that upon production of a certified copy of the interlocutor to follow hereon: and further, to dismiss the said petition at the instance of the said petitioners for sequestration of the estates of the said [bankrupt]; or to do otherwise in the premises as to your Lordship shall seem proper.

According to Justice, &c.

[Signed by Counsel, Agent, or Parties.]

The first interlocutor following on above note ordered service on bankrupt and the factor's cautioner, intimation to the Accountant of Court, and advertisement in the *Edinburgh Gazette*, and ordered answers in eight days. The second interlocutor recalled the factor's appointment, granted warrant for delivery of his bond of caution, and dismissed the petition for sequestration, all as craved.

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20. Report by Trustee of Offer and Acceptance of Composition.

Unto the Honourable the Lord Ordinary officiating on the Bills.

Report by A. B., trustee on the sequestrated estates of C. D. [design].

My Lord,

The trustee reports to your Lordship that at the meeting of creditors of the said C. D., held for the election of the

trustee on the day of , the said bankrupt made an offer of composition for payment of 5s. in the £ [or more or less as the case may be] to his whole creditors; and that it was resolved unanimously by the creditors present [or by a majority in number and nine-tenths in value of the creditors present] that the said offer and the security proposed by bankrupt for payment of the composition should be entertained for consideration.

A meeting of creditors was thereafter held on within after intimation in the *Gazette* and by letter in terms of the statute, for the purpose of deciding on the offer of composition made by bankrupt, at which meeting it was unanimously agreed by the creditors or mandatories for creditors present [or it was agreed by a majority in number and nine-tenths in value of the creditors or mandatories for creditors present] that the composition offered should be accepted. The composition offered by bankrupt was for payment of 5s. in the £ [or otherwise] on the debts of his whole creditors as at the date of sequestration, payable in two equal instalments, the first on and the second six months after the date of bankrupt's final discharge [or otherwise], and the security offered for their due payment was [name and design cautioner], of which security the creditors or mandatories for creditors unanimously approved [or of which security the above majority in number and value of creditors or mandatories for creditors approved].

A bond of caution by bankrupt as principal and the said as cautioner, executed of date , was duly lodged with the trustee, and the same is produced herewith along with minutes of the meetings held on and signed by the preses, copy of *Edinburgh Gazette* containing the statutory notice of the last-mentioned meeting, and copy of statutory letter issued to creditors, with certificate of postage appended.

The trustee has to report that his accounts have been audited by the commissioners, and the balance ascertained and his remuneration fixed; and the expenses attending the sequestration and said remuneration have been paid [or have been provided for to the satisfaction of the trustee and commissioners].

Humbly reported by

A. B., Trustee.

[Place and date.]

The report, with the relative productions above enumerated, will be sufficient in cases where the composition amounts to at least 5s. per £. If less, it will be necessary for the bankrupt to sign a short written statement setting forth that the cause of his inability to offer more has arisen from circumstances for which he cannot justly be held responsible. What these circumstances are must be shortly stated. Such written statement will be handed to the trustee, who will add a docquet certifying the same to be correct.

On the report and relative productions being considered by the Lord Ordinary, the following first order will be pronounced [written either on the report itself or on the interlocutor sheet which has remained in the Bill Chamber]:—

The Lord Ordinary, having considered the report by the trustee, minutes of meetings of creditors, bond of caution, and other productions [if less than 5s. per £ is compounded for—together with statement by the bankrupt as to the reasons for his failure to pay a composition of at least 5s. in the £]:* finds that the offer of composition, with the security therein mentioned, has been duly made and is reasonable, and has been assented to unanimously by the creditors assembled at the meeting of creditors held on [or—finds that the offer of composition, with the security therein mentioned, has been duly made and is reasonable and has been assented to by a majority in number and nine-tenths in value of the creditors assembled at the meeting of creditors held on . if such be the case], hereby approves of the composition and security, and appoints the bankrupt to appear before the Lord Ordinary and take the declaration in terms of the statute.

The bankrupt will thereafter appear before the Lord Ordinary and emit the following declaration, also written on the trustee's report, or on interlocutor sheet:—

At Edinburgh, the day of , in presence of The Honourable Lord , Ordinary, compeared , the bankrupt, who, being interrogated, declares—I have made a full and fair surrender of my estates, and have not granted or promised any payment or entered into any secret or collusive agreement or trans-

* If less than 5s. per £ compounded for a finding will be inserted here as follows—Finds that the failure to pay a composition of at least 5s. in the £ has arisen from circumstances for which he cannot justly be held responsible.

action to obtain the concurrence of any of my creditors to the offer of composition made by me to them, or to the security for the same.

[Signed by bankrupt and Lord Ordinary.]

The final interlocutor is next pronounced as follows:—

The Lord Ordinary, having resumed consideration of the proceedings, with the declaration by the bankrupt of date , finds the same satisfactory, discharges the bankrupt of the whole debts and obligations contracted by him or for which he was liable at the date of his sequestration; declares the sequestration to be at an end, and the bankrupt re-invested in his estate (reserving always the claims of the creditors for the composition against him and his cautioner); appoints the bond of caution to be recorded, and decerns.

Note.—In cases where bankrupt is insane or medically unfit, a declaration is dispensed with, and the interlocutor will be altered accordingly.

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21. Form of Bond of Caution for Composition.

[*Note.*—This bond will be prepared by agents, and not in the Bill Chamber.]

I [bankrupt, named and designed], and I [cautioner, named and designed], considering that upon the day of the estates of me, the said [bankrupt], were sequestrated by Lord , Ordinary, officiating on the Bills in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same; that at the statutory meeting of creditors held at on the day of 19 , [trustee named and designed] was elected trustee in the sequestration, and his election was thereafter duly declared and confirmed in terms of the statutes; that at a meeting of creditors held at on the day of I, the said [bankrupt], offered a composition to my creditors of per £ on my whole debts payable as follows [here insert dates of payments], and also offered to pay or provide for the whole expenses attending the sequestration and the remuneration of the trustee, and proposed me, the said [cautioner], as security for payment of the same; that the

creditors or mandatories for creditors present at said meeting unanimously [or otherwise by the statutory majority] resolved that the offer and security should be entertained for consideration; that the trustee forthwith advertised in the *Edinburgh Gazette* a notice that said offer of composition had been so made and entertained, and that it would be decided upon at the meeting to be held in on the day of and specified the hour, day, and place of same, and also transmitted by post, postage prepaid, letters to each of the creditors claiming on the estate or mentioned in the bankrupt's state of affairs, containing a notice of said resolution and of the day, hour, and place of the said meeting to be held, and specifying the offer and security proposed, and giving an abstract of the state of affairs and of the valuation of the estate so far as the same could be done, to enable the creditors to judge of said offer and security; that at the meeting held in on the day of the creditors or mandatories for creditors there assembled, unanimously [or otherwise by the statutory majority] accepted said offer and security; and seeing it is necessary, in terms of the statutes, that this bond of caution for payment of the said composition should be executed: therefore I, the said [bankrupt] as principal, and I, the said [cautioner] as cautioner, surety, and full debtor, for and with the said [bankrupt], bind and oblige ourselves jointly and severally, and our respective heirs, executors, and successors whomsoever, without the benefit of discussion, to pay to each and all of the true and lawful creditors of me, the said [bankrupt], the sum of in the £ of the several debts and obligations contracted by me or for which I was liable to said creditors respectively at the date of my sequestration, and that by equal instalments payable respectively [here insert dates when payable], together with interest at the rate of five per centum per annum on each instalment from the date of stipulated payment until paid, with a fifth part more of each payment further in name of penalty in case of failure: and we, the said [bankrupt and cautioner], bind ourselves as aforesaid to pay or provide for the whole expenses attending the sequestration and the remuneration of the trustee: and I, the said [bankrupt], bind and oblige myself and my foresaids to free and relieve, harmless and skaithless keep, the said [cautioner] and his foresaids of payment of said sums, principal, interest, and penalty, or any part thereof, and all loss, damage,

and expense which he may incur by his becoming cautioner in manner foresaid; and we, both principal and cautioner, consent to the registration hereof in the books of Council and Session that letters of horning on six days' charge, and all other legal execution needful, may pass hereon in common form as effeirs, and thereto constitute
procurators; In witness hereof [testing clause in usual terms].

Note—The above bond will be recorded, as ordered by the last interlocutor, in the books of Council and Session. Unlike an ordinary deed with consent to registration for preservation and execution, diligence can not proceed on an extract at the instance of a creditor. Accordingly, letters of horning must be applied for before the obligants may be charged for payment. The creditor desirous of charging has not been named in the bond, and will require in the first place to obtain a certificate from the ex-trustee showing his title to proceed. The certificate will be in the following terms:—

EDINBURGH, 19 .—I [name and design trustee], lately trustee on the sequestrated estates of [name and design bankrupt], hereby certify that [name and design creditor], duly lodged in the sequestration a claim with relative oath to a debt as creditor of the said [bankrupt] at the date of his sequestration for the sum of £ ; and was admitted without question to be reckoned as a creditor for said debt; and that the sequestration was closed by a composition, and the bankrupt discharged by the Lord Ordinary on the day of .

[Signed by Trustee.]

A bill for letters of horning will next be prepared as follows:—

My Lords of Council and Session,—Unto your Lordships humbly shews your servitor [name and design creditor], complainer, that by bond dated , granted by [name and design bankrupt] as principal and [name and design cautioner] as cautioner, surety, and full debtor for and with the said principal, they for the causes therein specified bound and obliged themselves jointly and severally, and their heirs, executors, and successors whomsoever, without the benefit of discussion, to pay to each and all of the true and lawful

creditors of the said [bankrupt] the sum of in the £ of the several debts and obligations contracted by him, or for which he was liable to said creditors respectively at the date of the sequestration of his estates, the same to be payable by equal instalments at [specify dates of payments] with interest at the rate of five per centum per annum on each instalment from the date of stipulated payment until paid, with a fifth part more of each payment further in name of penalty in case of failure.

That the said [bankrupt] was finally discharged by the Lord Ordinary on the day of . And whereas, by a certificate under the hand of [trustee named and designed] trustee on the said sequestrated estates, dated , it appears that the complainer duly lodged in the sequestration a claim, with relative oath, proving himself a creditor of the said [bankrupt] at the date of the sequestration of the estates of the said [bankrupt] for the sum of £ , and that in the acceptance of the offer of composition he was admitted without question to be reckoned as a creditor for said debt, as the bond registered in the books of your Lordships on the day of , and having a decree of your Lordships of that date interponed thereto, and the said certificate here to shew will testify.

Therefore the complainer beseeches your Lordships for letters of horning and poinding at his instance in common form.

According to Justice, &c.

's Bill.

Note.—The bill is not signed by an agent. The name of the Writer to the Signet who signs the letters themselves is inserted by the writer of the bill, at the end of same, thus—"A. B.'s Bill."

The bill, with extract registered bond of caution and trustee's certificate, will then be handed to the Clerk of the Bills, who, if satisfied, will grant a *fiat* in the following terms, viz.:—

EDINBURGH, .—*Fiat ut petitur,*—Because the Lords have seen the registered bond and certificate above mentioned.

[Signed] Clerk of the Bills.

This *fiat* will be written on the bill, which will then be exhibited to the Keeper of the Signet as his warrant for signeting the letters of horning and poinding. The letters are in these terms:—

EDWARD the Seventh, by the grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, to , Messengers-at-Arms, our Sheriffs in that part, conjunctly and severally, specially constituted, greeting: Whereas, it is humbly meant and shewn to us by our lovite , that by bond dated the day of , granted by as principal and by as cautioner, surety, and full debtor for and with the said principal, they, for the causes therein specified, bound and obliged themselves jointly and severally, and their heirs, executors, and successors, without the benefit of discussion, to content and pay to each and all of the true and lawful creditors of the said the sum of sterling in the £ of the debts owing by the said at the date of the sequestration of his estates, the same to be payable by equal instalments at [here insert dates of payment], with the lawful interest of the said composition from the respective terms of stipulated payment till paid, with one-fifth part more of each payment further in name of penalty in case of failure: That the said [bankrupt] was finally discharged on the day of : And whereas, by a certificate under the hand of , the trustee on the sequestrated estate of the said [bankrupt], dated , it appears that the complainer was a creditor of the said [bankrupt] at the date of his sequestration for the sum of ; as the said bond registered in the books of our Council and Session the day of , and having a decree of the Lords thereof of that date interponed thereto, and the said certificate shewn to the said Lords have testified: Our will is herefore, and we charge you that on sight hereof ye pass, and in our name and authority command and charge the said [bankrupt and cautioner], personally or at their respective dwelling-places, conjunctly and severally to make payment to the said complainer of the sum of £ , being the amount of the first instalment of the composition on the foresaid debt, with interest thereon, from the day of , when the same became payable, till paid,

together with the like sum of £ , being the second instalment of said composition, with the lawful interest thereon, from the day of , when the same is payable, and until paid—the term of payment of said second instalment being always first come and bygone, with a fifth part more of each payment incurred through failure, after the form and tenor of the said registered bond and certificate in all points, within six days next after they are charged by you thereto under the pain of rebellion and putting them to the horn: wherein, if they fail, the said space being elapsed, that immediately thereafter ye denounce them our rebels, put them to the horn, and use the whole other order against them prescribed by law: Attour that ye lawfully fence, arrest, apprise, compel, poind, and distrain all and sundry the said and 's readiest moveable effects of whatever denomination, make penny thereof to the avail and quantity of the said sums, and see the complainer completely paid and satisfied of the same.—According to Justice: Because the Lords have seen the registered bond and certificate above mentioned, as ye will answer to us thereupon; which to do we commit to you and each of you full power by these our letters, delivering them by you, duly executed and endorsed, again to the bearer: Given under our Signet at Edinburgh, the day of , in the year of our reign.—*Ex deliberatione dominorum concilii.*

[Signed] A. B., Writer to the Signet.

Note.—The letters are signed by the Writer to the Signet whose name appears in the bill already referred to. The date to be filled in at end of the bill must be the same as the date of the *fiat*.

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22. Form of Circular issued by Trustee to Creditors, in terms of Sec. 139 of the Act, calling Meeting to decide on Composition Offered.

Edinburgh, , 19 .

Sir [or Madam],

As trustee on the sequestrated estate of [design bankrupt], I hereby intimate that at the general meeting of his creditors held on , the said bankrupt made an offer of a composition of per £ to his whole

creditors on all debts due by him at the date of his sequestration, payable by equal instalments [insert dates when payable], and offered [design cautioner] as his cautioner. The said [bankrupt] further offered to pay or provide for the whole expenses attending the sequestration and the remuneration to the trustee.

That the creditors present at said meeting [or that a majority in number and nine-tenths in value of the creditors present at said meeting], having [unanimously] resolved that the offer and security should be entertained for consideration, another meeting of creditors will be held in on the day of next, at o'clock , for the purpose of finally deciding thereon.

In terms of sec. 139 of the Bankruptcy (Scotland) Act, 1856, I annex an abstract of the state of affairs and valuation of the estate, so far as same can be made out, to enable the creditors to judge of the said offer.

I am, your obedient servant,

Trustee.

Abstract state of affairs.

Funds [detail shortly].
Debts [detail shortly].

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23. Petition to Annul Bankrupt's Discharge in respect of Collusion between him and a Creditor who has Consented to Composition.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. and C. D. [*design*], creditors on the sequestrated estate of E. F. [*design bankrupt*], and duly ranked thereon,

Humbly sheweth—

That the estates of the said E. F. were sequestrated by the Sheriff of at [or by your Lordship] on the day of , and at a meeting of the creditors held at on the day of C. D. [design], of the petitioner's firm, was elected trustee on said sequestrated estates, and was duly confirmed as trustee foresaid on the day of , conform to act and warrant produced.

That the said E. F., at a meeting of the creditors on the said estates held on the day of , made offer of a composition upon the debts due by him, copy of which offer is herewith produced and is as follows:— [Quote here the offer by bankrupt.]

That the said offer of composition was submitted to the said meeting of creditors, and was duly entertained for consideration, and at another meeting of said creditors held at on the day of the said offer was accepted by the whole creditors then present.

That G. H. [design] is a creditor duly ranked on said sequestrated estates to the extent of £ sterling, and at the said meetings on and he was represented by who acted at these meetings as his mandatory.

That in breach of the provisions of the 150th and 151st sections of the Bankruptcy (Scotland) Act, 1856, particularly the latter section, the said E. F., between the dates of said two meetings, entered into a secret and collusive agreement and transaction with the said G. H., whereby he, the said E. F., gave and delivered to the said G. H. the following articles:— Gentleman's gold watch, valued at £ [detail other items] as a preference and gratuity in order to obtain his the said G. H.'s consent to the carrying of the said composition offer and its acceptance by the creditors, and for facilitating and obtaining the discharge of the said bankrupt on the foresaid offer.

Under this secret and collusive agreement and transaction the said G. H. accepted the said composition offer which otherwise he would not have done, and it was carried, and the said E. F. discharged in respect thereof on 19 .

Prior to his discharge the said E. F. made the statutory declaration in terms of sec. 140 of the Bankruptcy (Scotland) Act, 1856, to the effect, *inter alia*, that he had not granted or promised any preference or security, or made any payment, or entered into any secret or collusive agreement or transaction to obtain the concurrence of any creditor to such offer. The said trustee on the said sequestrated estates was discharged on 19 .

That the petitioners were creditors in the said sequestration for the sum of £ and were ranked for that sum and partly paid composition thereon. This matter has been

brought under the petitioners' notice in respect that the said C. D. was trustee as aforesaid in the said sequestration of the said E. F., from which he (the said C. D.) was discharged as aforesaid, and is at present trustee in a second sequestration of the said E. F. awarded by the Sheriff of at on the day of [or by your Lordship on the day of].

The said articles have been delivered by the said G. H. to the said C. D. as trustee on the said sequestrated estates of the said E. F. under the second sequestration.

That the process in the said first sequestration is believed to be with the Accountant of Court, and your Lordship's authority is necessary to have the same transmitted to the Clerk of the Bills for use in this process.

May it therefore please your Lordship, on considering this petition, to appoint a copy hereof, and of your Lordship's deliverance to follow hereon, to be served upon the said E. F., and to ordain him, if so advised, to lodge answers hereto within a certain short space of time, or to appear before your Lordship and answer hereto; to grant warrant upon the Accountant of Court or other custodier of the process to transmit the process in the said first sequestration to the Bill Chamber Clerk; and on again considering this petition, with or without answers, to annul the discharge of the said E. F., all in terms of the foresaid statute; or to do otherwise in the premises as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

Notes.—There would seem to have been but one case of a petition to have discharge of bankrupt annulled within recent years. The petition was one by Messrs. M'Culloch in 1897, of which the foregoing is, in substance, the form. In the Bill Chamber proceedings started with orders for intimation to bankrupt and to the creditor against whom allegations of collusion were made. Answers were lodged, and on a proof being taken, the prayer of the petition was refused. The petitioners reclaimed to the Second Division, who reversed the Bill Chamber judgment, and pronounced the following

interlocutor:—"EDINBURGH, 30th June, 1897.—The Lords, having heard counsel for the parties on the reclaiming note for the petitioners against the interlocutor of Lord Pearson, dated 20th March, 1897, recall the interlocutor reclaimed against and grant decree in terms of the prayer of the petition, and decern; find the petitioners entitled to expenses in both Courts, and remit the same," &c.

The prayer of the petition and the interlocutor say nothing in regard to markings on the Registers. If the abbreviate of discharge has been registered, the Court, it would appear, ought to grant a warrant for recording the interlocutor annulling discharge in the Registers of Inhibitions and Adjudications. It may be suggested here that in the prayer of the petition the Court should be asked "to find that the said [bankrupt] has forfeited all right to a discharge and all benefits under the statute, and to annul the discharge," &c. This would seem desirable looking to the provisions of sec. 151, and the interlocutor would include a finding as craved. In the form given the prayer merely asked that the discharge should be annulled, and the decree naturally was confined to what was asked.

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24. FORM OF PETITION TO HAVE A CREDITOR GUILTY OF COLLUSIVE CONCURRENCE IN BANKRUPT'S DISCHARGE FOUND LIABLE IN STATUTORY PENALTY UNDER SEC. 150 OF 1856 ACT.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of , trustee on the sequestrated estates of [if with concurrence of any of creditors ranked, insert, "with concurrence of and , creditors ranked on said sequestrated estates, and the said and for all right and interest competent to them in the premises," the petition being otherwise altered where necessary],

Humbly sheweth—

That the estates of the said [bankrupt] were sequestrated by your Lordship on , and at a meeting of creditors held at on the petitioner was elected trustee on said sequestrated estates, and was duly confirmed as trustee on , conform to act and warrant herewith produced.

That on , at a meeting of creditors, the said [bankrupt] made offer of a composition upon the whole debts due by him, which offer in the form of a letter [or otherwise] is produced, and is in these terms [quote].

That said offer of composition was submitted to the said last-mentioned meeting of creditors, and was duly entertained for consideration.

That at another meeting of creditors, held at on in terms of the statute, the said offer and the security proposed were accepted and approved by the whole creditors then present.

That it has been ascertained that , a creditor present at said meeting, prior thereto, had, in breach of the 150th section of the Bankruptcy (Scotland) Act, 1856, entered into a secret and collusive agreement and transaction with the said bankrupt, whereby the said [creditor], in respect of his obtaining from the bankrupt a preference, gratuity, security, or preferable payment, agreed to concur with the other creditors at said meeting in accepting the offer of composition above mentioned.

That the said [creditor] lodged a claim against bankrupt's estate with the petitioner as trustee in the sequestration, amounting to £ , and in terms of the composition accepted as aforesaid, the sum payable in respect of said claim amounts to £ ; and the petitioner has ascertained that, by the collusive agreement entered into as aforesaid, the bankrupt has paid, or has undertaken to pay, in addition to said last-mentioned sum, the sum of £ ; and the said [creditor] has received or has agreed to receive same.

That in said 150th section of the Bankruptcy (Scotland) Act, 1856, it is provided that, should any creditor have obtained a preference, gratuity, security, payment, or other consideration or promise thereof, or have entered into a secret or collusive consideration, or agreement, or transaction, of the nature above referred to, he shall forfeit his debt and be liable in payment of twice the amount received or accepted under such collusive agreement, by way of penalty.

May it therefore please your Lordship, on considering this petition, to ordain a copy hereof and of the deliverance hereon to be served upon the said [creditor], and ordain him, if so advised, to lodge answers hereto within a certain short induciæ, or to appear

before your Lordship personally and answer hereto; and on again considering this petition, with or without answers, to find that the said [creditor] has forfeited the debt claimed by him as aforesaid on the said sequestrated estates, and to ordain him to make payment to the petitioner as trustee foresaid of the sum of £ sterling, being double the amount of the said preference, gratuity, or payment, all in terms of the provisions of the statute; or to do further or otherwise as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

Note.—The above will be lodged with a separate process, not in the sequestration process. If the original sequestration process be in the custody of the Keeper of the Records or the Accountant of Court, a warrant may be asked for transmission of same. This crave should be inserted in the prayer after the words " or to appear before your Lordship personally and answer hereto." The crave will be " to grant warrant upon the Keeper of the Records and his depute, or other custodier of the sequestration process, to transmit the same to the Bill Chamber Clerk."

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25. Petition by Bankrupts for Discharge with Consent of Creditors in terms of Sec. 146 of 1856 Act.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. and C. D., the individual partners of A. B. C. D. & Co., manufacturers, Road, Edinburgh, as such partners and as individuals.

Humbly sheweth—

That the estates of the said A. B. C. D. & Co., and of the petitioners as partners of that firm and as individuals, were sequestrated by your Lordship on the day of , in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same; and that at the statutory meeting for the election of a trustee, held on the day of , , C.A., Edinburgh, was elected trustee in the sequestration.

That six months from the date of the deliverance actually awarding sequestration have now elapsed, and the petitioners are desirous of being finally discharged of all debts contracted by them before the date of their sequestration.

That the petitioners have, in terms of sec. 146 of the said Bankruptcy (Scotland) Act, 1856, procured the concurrence to this petition of a majority in number and four-fifths in value of their creditors who have produced oaths in the sequestration, in terms of the statute, conform to the trustee's certificate, and to minutes or letters of concurrence herewith produced.

That the said trustee has, in terms of the statute, prepared a report with regard to the conduct of the petitioners and as to how far they have complied with the said Bankruptcy (Scotland) Act, 1856, which report, dated , is herewith produced.

That a dividend of five shillings in the £ had been paid by the trustee out of the estates of the petitioners prior to his said report, and there has since been paid, on , a further dividend to the creditors of in the £.

May it therefore please your Lordship to order intimation of this petition to be made in the *Edinburgh Gazette* and to each of the creditors in the sequestration, and to make such further order for production of such further evidence of the facts set forth in the petition as your Lordship shall deem necessary; and if on the expiry of not less than twenty-one days from the date of publication in said *Gazette* of said intimation there be no appearance to oppose the same, or in the event of appearance being made and objections stated against granting the discharge, if the same be repelled, and on consideration of such further evidence as your Lordship may have deemed necessary, to pronounce a deliverance finding the petitioners entitled to their discharge both as partners of A. B. C. D. & Co. and as individuals on making the oath or declaration required by the statute; and on again resuming consideration of this petition, along with the said oaths or declarations made by the petitioners, to pronounce a deliverance or deliverances discharging the petitioners, both as partners of A. B. C. D. & Co.

and as individuals, of all debts and obligations contracted by them, or either of them, or for which they or either of them were liable at the date of the said sequestration on ; or to do otherwise in the premises as to your Lordship shall seem proper.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioners.]

INTERLOCUTORS, &C., FOLLOWING ON ABOVE PETITION.

The Lord Ordinary appoints the petition to be intimated in the *Edinburgh Gazette*, and to each creditor, in terms of sec. 146 of the Bankruptcy (Scotland) Act, 1856.

The Lord Ordinary, having resumed consideration of the petition, together with the report by the trustee in the sequestration, and also with the concurrences by the creditors to the statutory extent in number and value, and other productions, and no appearance being made on behalf of any person interested to object, finds the petitioners A. B. and C. D., mentioned in the petition, as partners and as individuals, entitled to their discharge, and appoints them to appear and emit a declaration, in terms of the statute.

Declaration by A. B.

At Edinburgh, the day of years, in presence of Lord , Ordinary, compeared the petitioner A. B. [design], who, being interrogated, depones that he has made a full and fair surrender of his own estates and those of his said firm, and has not granted any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction to obtain the concurrence of any of his creditors to his discharge; and all this he declares to be truth.

[Signed by deponent and Lord Ordinary.]

Declaration by C. D.

In same terms as above.

Interlocutor discharging bankrupts.

The Lord Ordinary, having resumed consideration of the petition, with the declarations made by the bankrupts [petitioners] A. B. and C. D., finds the said declarations

satisfactory, and discharges the petitioners of all debts and obligations contracted by them, or for which they were liable, both as partners of A. B. C. D. & Co. and as individuals at the date of the sequestration of their estates on 1913, in terms of the Bankruptcy (Scotland) Act, ~~1856, and Acts explaining and amending the same, and decerns.~~ and Decerns.

FORM OF REPORT BY TRUSTEE REFERRED TO IN THE SECOND INTERLOCUTOR.

Report by the trustee on the sequestrated estates of A. B. C. D. & Co., and of A. B. and C. D., the individual partners of that firm :—

The trustee has to report, in terms of the 146th section of the Bankruptcy (Scotland) Act, 1856, that the said A. B. and C. D. have complied with all the provisions of the statute; that they have made a satisfactory discovery and surrender of their estates; that the said A. B. and C. D. have attended the diets of examination, and have not been guilty of any collusion; and that the bankruptcy has arisen from losses in business, and not from culpable or undue conduct. A first dividend of 5s. per £ has been already paid to the creditors upon the estate, and the trustee believes that the estate yet to be realised and distributed will yield a further dividend to the creditors of at least per £.

[Signed by Trustee.]

[Address and date.]

FORM OF CONCURRENCE BY CREDITORS.

I, , being a creditor of A. B. C. D. & Co. [design], and A. B. and C. D., the individual partners of said firm, as such partners and as individuals, having seen the report by the trustee on their sequestrated estates, dated , do hereby concur in a petition to be presented by them to the Lord Ordinary to be finally discharged of all debts contracted by them before the date of the sequestration of their estates, in terms of and under the provisions of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

[Signed by creditor. If a firm, the firm's signature will be sufficient.]

[Date.]

Note.—Above concurrence may be either wholly written, or partly printed and partly written. A list of concurring

creditors made out to shew that they amount to the statutory number and value should be certified by the trustee, and lodged along with the concurrences themselves.

In case of insanity or illness of bankrupts, the declarations are dispensed with, and the interlocutors will be altered accordingly.

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26. Petition for Discharge by a Trustee who has had no Intromissions with Estate.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B., chartered accountant, Glasgow, trustee on the sequestrated estates of C. D., merchant in Greenock,

Humbly sheweth—

That of this date the estates of the said C. D. were sequestrated by your Lordship by virtue of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

That the petitioner was elected trustee in said sequestration at a meeting of creditors held of this date , and his election was thereafter duly declared and confirmed, conform to act and warrant by the Sheriff-Substitute of the county of Lanark herewith produced.

That it turned out that there were no funds in the sequestration, and the petitioner has consequently had no intromissions. He has now been called upon by the Accountant of Court to apply for his discharge, and the present application is accordingly made.

That the petitioner's cautioner is E. F. [design cautioner], who consents to this application, as appears from consent herewith produced.

May it therefore please your Lordship, on considering this petition, to pronounce decree of exoneration and discharge in favour of the petitioner as trustee foresaid, and to grant warrant for delivery to him of his bond of caution; or to do otherwise in the premises as to your Lordship shall seem proper.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

1st Order—Remit to Accountant of Court.
2nd Order—Decree as craved.

27. Petition by a Trustee who has Resigned and who has held Office both as Interim Factor and as Trustee, for Discharge.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [*design*], some time trustee on the sequestrated estates of , for exoneration and discharge as judicial factor and as trustee respectively upon said sequestrated estates,

Humbly sheweth—

That on [date] an application was presented to your Lordship at the instance of , a creditor to the extent required by law of , craving sequestration of the estates of the said , and also craving the immediate appointment of a judicial factor under sec. 16 of the Bankruptcy (Scotland) Act, 1856.

That upon the same date your Lordship appointed the present petitioner to be judicial factor foresaid, and he found caution in common form and entered into possession of the estates.

That on [date] the estates of the said were sequestrated by your Lordship in terms of the Bankruptcy (Scotland) Act, 1856, and relative statutes, and on [date] the petitioner, having found caution as trustee, was confirmed in that office.

That thereupon the petitioner entered upon the management of the said sequestrated estates and continued in the management thereof till [date], when, having resigned the trusteeship, his resignation was accepted by the creditors.

Thereafter was duly confirmed as trustee in room of the petitioner.

That the accounts of the petitioner's intromissions as judicial factor and as trustee respectively were duly audited by the commissioners and transmitted to the Accountant of Court, and the petitioner accounted and paid over to his successor, the said , the whole moneys in his hands, and also delivered to him the sederunt book and other papers and documents relating to the sequestration, receiving from the said an acknowledgment of same, which is herewith produced.

That the petitioner, under these circumstances, is entitled to exoneration and discharge, and to delivery of his bond of caution.

That the cautioner of the petitioner as judicial factor foresaid was , and the cautioner of the petitioner as trustee foresaid was .

May it therefore please your Lordship to order intimation of this petition to be made to the said as trustee upon the said sequestrated estates, and to the said and [cautioners]; and thereafter (First) to exoner and discharge the petitioner of his whole actings and intromissions as judicial factor foresaid, and to grant warrant for delivery of his bond of caution as such judicial factor; and (Second) to exoner and discharge the petitioner of his whole actings and intromissions as trustee foresaid, and to grant warrant for delivery of his bond of caution as such trustee; and to find the petitioner entitled to the expenses of this application out of the said sequestrated estates; or to do otherwise in the premises as to your Lordship shall seem proper.

According to Justice.

[Signed by Counsel, Agent, or Petitioner.]

1st Order—Service as craved, and answers in eight days.

2nd order—Remit to Accountant of Court.

3rd Order—New trustee appointed to state, by minute lodged within fourteen days, whether he is satisfied with petitioner's intromissions.

4th Order—Decree in terms of prayers of petition.

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28. Petition by Trustee for Discharge when Estate has been Wound up under Composition Contract.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [*design*], trustee on the sequestrated estates of [*design bankrupt*],

Humbly sheweth—

That the estates of the said [bankrupt] were sequestrated by your Lordship on in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

That the petitioner was on duly confirmed as trustee on said sequestrated estates.

That the bankrupt, having made an offer of composition to his creditors, with the security of [design cautioner for composition] for payment thereof, and the said offer and security having been duly entertained and ultimately accepted, your Lordship on pronounced a deliverance discharging the said bankrupt, declaring the sequestration at an end, and re-investing the bankrupt in his estates.

That the petitioner's accounts and vouchers as trustee in said sequestration have been duly audited by the commissioners, and no balance has been ascertained to be due by him to the estate; and the account, with docquet by said commissioners, is herewith produced.

That the bankrupt and C. D. [design trustee's cautioner], the petitioner's cautioner, both consent to the prayer of this petition being granted, as will appear from consents produced herewith.

That the petitioner therefore respectfully submits that he is entitled to decree of exoneration and discharge and for delivery of his bond of caution.

May it therefore please your Lordship, on considering this petition, to exoner and discharge the petitioner of his whole actings, intromissions, and management as trustee on the sequestrated estates of the said [bankrupt], and to grant warrant for delivery to petitioner of his bond of caution, and to decern; or to do otherwise in the premises as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

The order exonering and discharging petitioner will be pronounced at once. But if the bankrupt and cautioner do not consent to the application the petition will be altered accordingly and a first order for service on them will be pronounced. See note on page 439 as to the Sheriff-clerk delivering up bond of caution. Applications for discharge by trustees in the case of composition are almost unknown.

29. Petition by Trustee for Discharge after Final Division of Estates.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [*design*], trustee on the sequestrated estates of [*design bankrupt*],

Humbly sheweth—

That the estates of the said [bankrupt] were sequestrated by your Lordship on in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

That the petitioner was on duly confirmed as trustee on said sequestrated estates.

That the petitioner has, with the advice of the commissioners, realised and converted into money the whole estates of the bankrupt, heritable and moveable, and that a final division of the funds has been made by petitioner.

That the petitioner convened a meeting of creditors by advertisement in the *Edinburgh Gazette* and letters, in terms of sec. 152 of the said Bankruptcy (Scotland) Act, 1856, which meeting was held within on the day of ; and the petitioner having laid before the creditors assembled thereat the sederunt book, accounts, and vouchers, examined and audited by the commissioners, with a list of unclaimed dividends, the meeting declared their opinion, approving of the regularity and correctness of the petitioner's actings and intromissions as trustee.

That the petitioner has transmitted to the Accountant of Court the sederunt book, and has consigned with the said Accountant of Court the dividends unclaimed in the sequestration.

That your petitioner, in the circumstances, respectfully applies for exoneration and discharge in terms of the bankruptcy statutes.

May it therefore please your Lordship, on considering the petition, to pronounce decree exonering and discharging the petitioner as trustee foresaid, and to grant warrant for delivery of his bond of caution; or to do otherwise in the premises as to your Lordship shall seem proper.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

1st Order—Remit to the Accountant of Court for report.
2nd Order—Decree in respect of report.

Note.—The Sheriff-clerk, in whose custody the bond of caution lies, will deliver up same on exhibition of an extract of the decree. If an extract is not desired by petitioner, the prayer of the petition should run—"To grant warrant for delivery of his bond of caution, and that on production of a certified copy of the interlocutor to follow hereon."

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30. Appeal to Inner House by Bankrupt who has been Refused Discharge by the Sheriff-Substitute.

[The record will have a title page and index made up as in an ordinary appeal from the Sheriff Court, the order of printing documents being as follows]:—

(1) Note of Appeal.

.—The Sheriff-Substitute, having considered the foregoing petition, with the trustee's report and other productions made therewith, and the minute for the petitioner lodged on inst., and having heard the agent for the petitioner in explanation, no one appearing to oppose, finds that the petitioner has failed to prove that the failure of his estate to pay a dividend to his creditors of 5s. per £ has arisen from circumstances for which he cannot justly be held responsible, therefore refuses the petitioner his discharge; and decerns.

Unto the Right Honourable the Lords of Council and Session.

Note of appeal for

That in the process of sequestration of the estates of the said under the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, presently depending in the Sheriff Court of at the Sheriff-Substitute was, of date the day of , pleased to pronounce the deliverance above copied, which the appellant respectfully brings under the review of your Lordships, in terms of sec. 170 of the statute first above mentioned.

May it therefore please your Lordships to recall the deliverance complained of; to find the appellant entitled to his discharge; or to do otherwise as to your Lordships shall seem proper.

According to Justice, &c.

[Signed by Agent who has acted in the Sheriff Court proceedings.]

(2) [Print petition by bankrupt in Sheriff Court.]

(3) Report by , trustee on bankrupt's estate.

The trustee has to report, in terms of the 146th section of the Bankruptcy (Scotland) Act, 1856, that the said has complied with all the provisions of the statute: that so far as the trustee has been able to ascertain, the bankrupt has made a satisfactory discovery and surrender of his estate, and that he has attended the diets of examination, and has not been guilty of any collusion. The bankruptcy has arisen in respect of claims made upon the bankrupt under bills and other obligations granted by him for [detail]. In view of this, and also of the fact that [narrate facts], the trustee considers the bankruptcy has arisen from culpable conduct.

No dividend or composition has been paid out of the estate of the bankrupt, nor has security for the payment of a dividend of 5s. in the £ been offered to the creditors.

(4) Interlocutors on petition for bankrupt's discharge.

.—The Sheriff-Substitute, having considered the foregoing petition, with the trustee's report on the bankrupt's conduct produced, appoints intimation of the application to be made by advertisement published in the *Edinburgh Gazette*, and by circulars to all the creditors, in terms of the statute.

[The second interlocutor is that which has been prefixed.]

Note.—In vacation the appeal is dealt with by the Lord Ordinary officiating on the Bills. Although in such case printing is not imperative, it is found to be preferable to have the appeal printed, and this is invariably done. The Lord Ordinary's judgment is reclaimable.

Procedure in appeals to Inner House is as follows:—The Sheriff Court process is transmitted to the Bill Chamber when the manuscript note of appeal is lodged along with a new process. The appeal is marked by the Clerk to the Bills, and the proceedings are then transmitted to either Division of the Inner House, except in vacation as above stated. When the record has been printed and boxed the appeal will come out in the Single Bills automatically. The title and index of the print will be in the same form as an ordinary record in an appeal from the Sheriff Court.

It must be kept in view that, in an appeal where the original award of sequestration was granted in the Bill Chamber, such appeal can only be taken to the Division to which the original petition was marked.

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31. Appeal to Inner House by Creditors objecting to Bankrupt's Discharge.

[The record, with title page and index, will be in the same form as an ordinary appeal from the Sheriff Court.]

(1) Note of Appeal.

Interlocutor of the Sheriff-Substitute.

.—The Sheriff-Substitute, having resumed consideration of the petition, with the trustee's report on the bankrupt's conduct, statement by the bankrupt, lodged on inst., concurred in by the trustee, answers thereto by the opposing creditors, A. B. and others, and whole process, and having heard counsel for the petitioner and for said opposing creditors, and having also heard the explanations made by the trustee personally in presence of counsel, repels the objections to the granting of the petition; finds that the failure to pay a dividend or composition of five shillings per pound out of the estate of the bankrupt has arisen from circumstances for which he cannot justly be held responsible; finds the petitioner entitled to his discharge, and appoints him to appear and make a declaration in terms of the statute, and decerns.

Unto the Right Honourable the Lords of Council and Session.

Note of appeal for A. B. and others [*design*], creditors in the sequestration of C. D. [*design*].

That in the process of sequestration of the estates of the said C. D., under the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, presently depending in the Sheriff Court of , the Sheriff-Substitute was, on the day of , pleased to pronounce the deliverance above set forth, which the appellants respectfully bring under the review of your Lordships, in terms of sec. 170 of the statute first above mentioned.

May it therefore please your Lordships to recall the deliverance complained of, to find the appellants entitled to the expenses of process, both in your Lordships' Court and in the Sheriff Court; or to do otherwise as to your Lordships shall seem proper.

[Signed by Agent who has acted in Sheriff Court proceedings.]

Note.—The other documents will be printed in order similar to preceding form.

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32. Appeal by Trustee where Commissioners refuse to pass his Accounts. Sec. 169 of 1856 Act.

[Prefix a copy of the resolution which has been signed by the commissioners.]

Unto the Honourable the Lord Ordinary officiating on the Bills.

Note of appeal for A. B., chartered accountant in Edinburgh, trustee on the sequestrated estates of .

The appellant is trustee on the sequestrated estates of the said , conform to act and warrant in his favour dated , herewith produced. Mr. , Mr. , and Mr. are the commissioners on said sequestrated estates.

On a meeting of commissioners was held in terms of the statute, for the purpose of examining the appellant's accounts of intromissions as trustee, and of declaring a dividend.

At said meeting the commissioners present, viz., the said and , went carefully over the appellant's accounts of intromissions, and objected to pass the following charges entered therein, viz.—[here insert the charges objected to].

The commissioners present expressed their unwillingness to undertake the responsibility of certifying the correctness of these items, and recommended the appellant to lay the whole accounts before the Accountant of Court for his decision on the items in dispute.

The Accountant of Court met the appellant and the said commissioners, and having heard them state their respective contentions, he on wrote the appellant as follows:—[here is quoted the Accountant's written decision].

In terms of a direction in the Accountant's said letter, the appellant convened a meeting of commissioners, which was held in his chambers on , and again laid his said accounts of intromissions and the Accountant's letter before them, but they again objected to pass his accounts, and issued the resolution prefixed hereto, which is now appealed against.

In view of the decision of the Accountant of Court, the appellant does not insist in his claim for commission.

The appellant considers himself aggrieved by the said resolution of the commissioners, and respectfully appeals against the same.

This note of appeal is presented under and in virtue of sec. 169 of the Bankruptcy (Scotland) Act, 1856.

May it therefore please your Lordship to appoint a copy of this note of appeal and of the deliverance hereon to be served on the said and [the commissioners], and appoint them to appear at a specified diet within such period as may be reasonable, and thereafter to recall the said resolution appealed against, and to order a new meeting of the said commissioners to be held in order to reconsider said resolution, and to pass the appellant's said accounts of intromissions, and to find the respondents liable in the expenses of this appeal.

In respect whereof, &c.

[Signed by Counsel, Agent, or Appellant.]

[The appeal will be lodged with a separate process.]

1st Order—Service and compearance ordered on a given date. If necessary, an order can be granted authorising the Sheriff-clerk to transmit the process to the Bill Chamber.

2nd Order—Resolution recalled and a new meeting ordered as craved. Expenses modified as against respondents.

Note.—No actual appearance in Court is necessary. Appearance can be entered in the Bill Chamber down to the date fixed in the interlocutor (ten days), and the case can thereafter be enrolled for further procedure, *i.e.*, lodging condescendence and answers or hearing parties. If condescendence and answers be ordered, the interlocutor will run—"Appoints the appellant to lodge a condescendence in support of his appeal within ten days, and the respondents to lodge answers thereto within ten days thereafter." A record will then be closed on the condescendence and answers and parties appointed to be heard; or a proof may be allowed. The appeal may, however, be disposed of on a hearing on the note of appeal itself. Interlocutors in such appeals are reclaimable.

The above proceedings were carried through under sec. 169 of the Bankruptcy Act, 1856. A different form of procedure has, however, been introduced by sec. 17 of the Judicial Factors (Scotland) Act, 1889, by way of appeal by written note to the Accountant of Court, who, in the event of his decision or suggestions not being accepted, shall lay the matter before the Lord Ordinary or the Sheriff by a written report. The decision of the Lord Ordinary or Sheriff is final, but in an appeal under the 169th section of the 1856 Act the decision of the Lord Ordinary is reclaimable. It may be doubted whether the general right of appeal under the 169th section, in a question of commission, is competent, seeing that special provision has been made for appeal in such matter by the Judicial Factors Act. Under that Act there have only occurred two cases out of thirty-five appeals where the parties have not acquiesced in the Accountant's ruling, and in these two cases the report was made, not to the Lord Ordinary, but to the Sheriff, and as the forms used may be adapted to suit Court of Session requirements, a form of report, with proceedings, in one of the cases is here given.

REPORT BY ACCOUNTANT OF COURT TO THE SHERIFF.

In the Sequestration of A.B.[*design*], Report by the Accountant of Court respectfully submitted to the Sheriff of in terms of sec. 17 of the Judicial Factors (Scotland) Act, 1887.

The estates of the said A. B. were sequestrated of this date [on margin] by the Lord Ordinary, and of this date [on margin] C. D., the trustee elected by the creditors, was duly confirmed by your Lordship.

Of this date [on margin] the commissioners having audited the trustee's accounts, fixed the trustee's commission at £ , authorised him to take credit therefor, and [here state whether a dividend declared or any further resolution arrived at at the meeting of commissioners].

[Here state what further procedure has taken place in the sequestration.]

The following is an abstract of the trustee's intromissions to [date].

Receipts [insert details].

Payments [insert details, including law expenses, commission, and dividends].

The trustee, in terms of sec. 17 of the Judicial Factors (Scotland) Act, 1889, intimated the deliverance of the commissioners fixing his commission, and of this date [on margin], also in terms of said section, a note of appeal against it, herewith produced, was lodged with the Accountant on behalf of E. F. [design], a creditor, and one of the commissioners on said estate, who had dissented from the finding of the foresaid meeting of [insert date of meeting at which commission fixed].

The Accountant proceeded to inquire into the matter, and, having examined the state of facts and answers by the trustee, the law accounts and other documents produced, intimated of this date [on margin] disapproval of the commission as fixed, and suggested £ as a suitable commission in the circumstances. A copy of the Accountant's deliverance is produced herewith.

[Here state any other circumstances in the sequestration necessary to be brought under the notice of the Sheriff.]

The trustee of this date [on margin], by letter herewith produced, has intimated non-acquiescence in the Accountant's suggestion, and the Accountant accordingly reports the matter to your Lordship for final decision, as provided by said Act.

APPENDIX.

List of Documents produced.

[These consist of note of appeal by objector, trustee's accounts, minutes of meetings, correspondence, &c.]

Note.—The note of appeal to the Accountant may be in the form of a letter. The state of facts and answers will be in the form directed by the Accountant. The decision of the Sheriff on the report, which is final, may affirm, reverse, or alter the Accountant's decision. The following interlocutor was pronounced in one of the two appeals before referred to:—"Having heard parties' procurators on the foregoing note of appeal for , with the report of the Accountant of Court, the statement of facts and answers by the trustee, the deliverance by the Accountant of Court in the appeal, and whole process, sustains the appeal; approves of the suggestion of the Accountant, and accordingly fixes the fee payable to the trustee at the sum of £ sterling, or £ in addition to the sum formerly allowed by the commissioners: Finds the trustee liable in the expenses incurred by the appellants; allows an account to be lodged, and remits the same to the Auditor of Court to tax and report."

From the terms of the interlocutor it would seem that, in addition to the report by the Accountant, a note of appeal was lodged. Sec. 17 of the Act of 1889 does not, however, provide that such note of appeal shall be lodged, and as the Accountant's report narrates the whole circumstances of the dispute, a note of appeal would seem superfluous.

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33. APPEAL BY A CREDITOR AGAINST TRUSTEE'S DELIVERANCE. SEC. 169 OF 1856 ACT.

[Prefix deliverance appealed against.]

Unto the Honourable the Lord Ordinary officiating on the Bills.

Note of appeal for A. B. [*design*], a creditor in the sequestration of

The appellant is a creditor in the sequestration of the said , his claim as lodged amounting to £ .

On the day of , C. D. [design], the trustee on the sequestrated estates of the said , pronounced the

deliverance prefixed hereto; and as the appellant considers himself aggrieved by said deliverance, he respectfully appeals against the same.

This note of appeal is presented under and in virtue of sec. 169 of the Bankruptcy (Scotland) Act, 1856.

May it therefore please your Lordship to recall the said deliverance appealed against, and to ordain the said trustee to [here state what the appellant wishes], and to find the appellant entitled to expenses.

In respect whereof, &c.

[Signed by Counsel, Agent, or Appellant.]

PROCEDURE.

The first order appoints a copy of the note of appeal and of the deliverance to be served upon the respondent or upon his mandatory or known agent, and appoints the respondent to appear in Court at a specified date (usually ten days). This means that the agent for the respondent attends at the Bill Chamber and puts a marking of appearance on the note of appeal. When no appearance is made within the specified time the appeal is sustained.

When appearance is made, the appeal falls to be enrolled by the appellant's agents for an order to lodge a condescendence in support of his appeal within a short period (usually ten days), and for an order on the respondent to answer same within a similar short period. The record is then closed on the note of appeal, condescendence, and answers, and parties ordered to be heard; or a proof may be ordered. The appeal may, however, may be disposed of on a hearing on the note of appeal itself. Interlocutors in such appeals are reclaimable.

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34. PETITION BY TRUSTEE TO OBTAIN POSSESSION OF NEW ESTATE ACQUIRED BY BANKRUPT.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of , trustee on the sequestrated estates of ;

Humbly sheweth—

That the estates of the said were of this date sequestrated by your Lordship in terms of the

Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same; and after the usual steps of procedure, the petitioner was duly confirmed as trustee on said estates.

That certain estate, being the said 's interest in the succession to the estate of his wife, , who resided with him at and who died at on , has, since the date of the sequestration of the said , been acquired by him *jure relicti* or otherwise. That an inventory of the personal or moveable estate of the said , stated as amounting to £ , subject to deduction of debts and funeral expenses amounting to £ or thereby, has been recorded in the Sheriff Court books at . An eik thereto has also been given up. The petitioner believes that the interest of the said *jure relicti* in said moveable estate, being one-third thereof, is not less than £ or thereby. The executor of the said , who has been confirmed as such by the Sheriff at , is , who, the petitioner believes and avers, is now intromitting with her estate.

That said sequestration still subsists: that the sequestrated estate, so far as yet realised, amounts to £ only, while the unsecured claims of creditors, preferable and ordinary, conform to the bankrupt's state of affairs, amount to £ ; that no dividend has been paid; and that the bankrupt, who now resides at , is undischarged.

That the petitioner makes this application to your Lordship in terms of the 103rd section of the Bankruptcy (Scotland) Act, 1856.

May it therefore please your Lordship to appoint this petition to be intimated in the *Edinburgh Gazette* and to be served upon the said personally, or at his dwelling-place, and upon the said , as executor foresaid, by delivery of a copy hereof at the office of the Keeper of the Record of Edictal Citations, and to appoint all concerned to appear within a certain space for their interest; and after the expiry of such time, and no cause being shewn to the contrary, to declare the whole right and interest of the said *jure relicti* or otherwise in the estate of his wife, the late , to be vested in the

petitioner as trustee foresaid as at the date of the said . 's succession thereto, in terms of the said Act; or to do otherwise in the premises as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

PROCEDURE.

1st Order—Intimation in the *Gazette* and service on parties named in prayer, and answers in ten days.

2nd Order—Hearing on petition and answers, or a proof.

3rd Order—Grant or refuse petition.

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35. PETITION UNDER 106TH SECTION OF 1856 ACT FOR TRANSFER OF DECEASED BANKRUPT'S HERITAGE TO TRUSTEE, THE HEIR HAVING COMPLETED TITLE THERETO.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [*design*], trustee on the sequestrated estates of the deceased C. D. [*design*],

Humbly sheweth—

That the estates and effects of the said deceased C. D. were sequestrated by the Lord Ordinary officiating on the Bills on [date], in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, and the petitioner was on [date] confirmed by the Sheriff of as trustee thereon.

That the said deceased C. D., at the time of his death, which took place at on the day of , was possessed of considerable heritable estate consisting of [specify].

That to said heritable estate the deceased's surviving brother, E. F., had procured himself served heir in [special or general], and in that character made up titles to the said heritable estate.

That the said E. F. died on in possession of the said heritable estate, and was succeeded by his eldest son, G. H., who served himself as heir in [special or general], to his father, the said E. F., and now stands vested in the heritable estate which formerly belonged to the bankrupt, the said deceased C. D.

The present application is therefore made to your Lordship to have the heritable estate of the said deceased C. D., to which the said G. H. has made up a title as aforesaid through his deceased father, transferred to and vested in the petitioner in terms of sec. 106 of the Bankruptcy (Scotland) Act, 1856.

May it therefore please your Lordship to appoint this petition to be intimated on the walls and in the minute book in common form, and to order same and the deliverance hereon to be served on the said G. H. as successor of the said C. D. in manner before mentioned, personally or at his dwelling-place, and to appoint him to lodge answers hereto within fourteen days thereafter if so advised; and on resuming consideration hereof, with or without answers, to declare the heritable estate which belonged to the said deceased C. D., to which his successor, the said G. H., has made up a title as aforesaid, to be transferred to and vested in the petitioner as trustee foresaid to the same effect as is provided in said Act in regard to the act and warrant of confirmation; and in the event of the said G. H. appearing to oppose this application, to find him liable in expenses; or to do further or otherwise as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

1st Order—Intimation and service as craved.

2nd Order—The Lord Ordinary, having considered the petition and answers, and heard counsel for parties, repels respondent's pleas against granting the prayer of the petition, and in terms of sec. 106 of the Bankruptcy (Scotland) Act, 1856, declares the heritable estate which belonged to the deceased C. D., and to which his successor, the said G. H., has made up a title as aforesaid, to be transferred to and vested in the petitioner as trustee on the sequestrated estates of the said C. D. as at the date of the sequestration, to the same effect as is provided in said Act in regard to the act and warrant of confirmation, and decerns; finds the objector, the said G. H., liable in expenses, and remits the account thereof to the Auditor to tax and to report.

ABBREVIATE TO BE RECORDED WITHIN EIGHT DAYS OF ABOVE DELIVERANCE IN THE REGISTER OF ADJUDICATIONS, &c.

The estates vested in G. H. [design], as heir of C. D. [design], are transferred and belong to A. B. [design], as trustee on the sequestrated estates of the said C. D., conform to deliverance by the Lord Ordinary dated the day of , and in terms of the Bankruptcy (Scotland) Act, 1856.

[Signed by Petitioner or his Agent.]

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36. PETITION TO TAKE ESTATE OUT OF SEQUESTRATION.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of , presently residing at ;

Humbly sheweth—

1. That the petitioner's husband, the deceased , died on , leaving a trust disposition and settlement under which the petitioner is entitled to the liferent of her husband's estate. The trustees under the said trust disposition and settlement were the petitioner and the now deceased [bankrupt], the latter of whom was appointed agent in the trust, and continued to act as such until his death on . Mr. carried on business in .

2. In the petitioner also appointed Mr. to act as her own agent, and as she contemplated that she might not continue resident in Scotland, she granted in his favour a factory and commission, dated , and registered in the books of Council and Session , an extract of which is produced and referred to. At this time the petitioner was the owner of shares of the , the certificates for which were handed over to Mr. , along with other papers belonging to the petitioner. In twenty-five of these shares were sold on the instructions and with the approval of the petitioner. In the remaining shares of said , belonging to the petitioner, were sold by Mr. without the knowledge and against the wishes of the petitioner. Indeed, she was unaware that the said shares had been sold until after the death of Mr. , when she learned the fact for the first time from the agents of his representatives. The transfers of said shares were executed by Mr. under the powers contained in the said factory and commission.

3. The proceeds of said shares were paid over to Mr. on , and amounted to the sum of £ , under deduction of a dividend received by him on , but which was payable by him to the purchaser, amounting to £ , leaving £ . On said , Mr. also received on account of rents of heritable property in belonging to the petitioner the sum of £ , making in all £ . The said sum of £ was on the same day paid into the bank account kept with the Bank in the name of the said Mr. , that payment forming the only operation on the bank account on that day. On Mr. drew from the current account the sum of £ , and on the same day he placed that sum on deposit receipt in the name of Messrs. , the firm of which he was sole partner, with said bank in seven separate receipts, six of these being for £ , and one for £ . At the date of these transactions there was only a small balance at the credit of the firm's current account, and the deposit receipts above mentioned contained the whole of the money belonging to the petitioner, which had been lodged on the current account on . It is believed that Mr. sold the said shares with the view of reinvesting the proceeds in some other security, and that he placed the sums on deposit receipt until he should obtain such investment. But he died without having done so. Two of the said deposit receipts, viz., one for £ and one for £ , were subsequently cashed by Mr. , and the proceeds received by him, but the remaining five deposit receipts for £ each were extant at the date of Mr. 's death, and the sums contained therein are the property of the petitioner, and form no part of the estate of Mr. .

4. On Mr. 's death his affairs were found to be embarrassed, and on the application of his widow, Mr. , C.A., Edinburgh, was appointed judicial factor on his estate. On , however, a petition was presented by a creditor for sequestration of Mr. 's estate under the Bankruptcy Acts, and sequestration was granted on . The judicial factor, Mr , was appointed trustee on the sequestrated estate. In the course of his administration as judicial factor Mr. cashed the said five deposit receipts, and re-deposited them in his own name as judicial factor, with the

interest accrued thereon. On his appointment as trustee on Mr. sequestrated estate, the judicial factor handed over the said deposit receipts or the proceeds thereof to himself as trustee in bankruptcy, and the said deposit receipts or the proceeds thereof are now in his possession, and are claimed by him as part of the estate of the deceased Mr. .

5. The sums contained in the said five deposit receipts in name of , dated , which were extant at Mr. 's death, have been erroneously included in the sequestrated estate of Mr. . These sums did not belong to him at the date of his death. They were held by him for behoof of the petitioner, and they ought not to have been included among the funds and estate of Mr. . They belong to the petitioner, and she is entitled to have the same taken out of the sequestration and handed over to her. In these circumstances the petitioner makes the present application to your Lordship. The petition is presented under sec. 104 of the Bankruptcy (Scotland) Act, 1856, 19 & 20 Vict. cap. 79.

May it therefore please your Lordship to appoint this petition to be intimated on the walls and in the minute book in common form, and to be served upon the said as trustee on the sequestrated estate of the said deceased , and also as judicial factor foresaid, and to ordain him to lodge answers hereto, if so advised, within eight days after service; and on resuming consideration hereof, with or without answers, to find that the sums contained in the said five deposit receipts for £ each in name of , dated , which were extant at the date of the death of the deceased , with the interest accrued thereon, did not belong to him, and do not now form part of his sequestrated estate, but that they were and are the property of the petitioner; that the said , as trustee foresaid, has no right or title thereto, and that the same should be taken out of the sequestration accordingly; to ordain the said , as trustee foresaid, forthwith to deliver over, duly endorsed, to the petitioner the deposit receipts which were

substituted for the said above-mentioned deposit receipts, dated , with all interest accrued thereon from ; or otherwise to decern and ordain the said , as trustee foresaid, to make payment to the petitioner of the sum of £ sterling, being the amount of the sums contained in said five deposit receipts, dated , at the date of the death of the said , with bank interest accrued or to accrue thereon from to the date of payment; and to find the petitioner entitled to expenses; or to do further or otherwise as to your Lordship may seem proper.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

1st Order—Intimation and service, and answers in eight days.

2nd Order—Proof.

3rd Order—Granting or refusing application.

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37. Petition for Approval of Scheme of Division.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B., trustee on the sequestrated estates of , ,

Humbly sheweth—

That the estates of the said were of this date, , sequestrated by the Sheriff of , at , in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same. The petitioner was of this date, , confirmed trustee on his estates.

The said was, at the date of said sequestration, proprietor of (1) certain heritable subjects situated at , and (2) subjects situated in . The latter subjects were sold for £ at Martinmas, . Of the price, £ was paid in extinction of a bond and disposition in security for that sum over the subjects, and the balance of the price was applied by the trustee in payment of a dividend to the creditors on the estate.

That the petitioner, in virtue of sec. 113 of the Bankruptcy (Scotland) Act, 1856, with consent of the commissioners on the said sequestrated estates, and also with consent of , holding a heritable security over the said heritable subjects first above mentioned for the sum of £ , exposed the said subjects to sale by public roup and sale in eight lots on , and lots 1, 3, and 4 were sold as follows, viz.:—

Lot 1. To at the price of £ .
Lot 3. To at the price of £ .
Lot 4. To at the price of £ .

That no offerers appeared at said exposure for lots 2, 5, 6, 7, and 8.

That on the said lots 2, 5, 6, 7, and 8 were, in like manner, again exposed to public roup and sale, and that lot 7 was sold to , at the price of £ , but she was unable to carry out the purchase, and forfeited the same; and lot 8 was sold to , at the price of £ .

That on the remaining lots, 2, 5, and 6, and the said forfeited lot 7, were, along with the minerals under the whole of the foresaid lots, exposed to sale by public roup, and were sold to at the price of £ .

That on delivery of dispositions of the said subjects by the petitioner, with consent of , auctioneer, and , the commissioners on said sequestrated estates of , and also with consent of the said [bondholders] in favour of the several purchasers, the prices of said lots 1, 3, 4, and 8, amounting to £ , with interest on the price of lot 1 from , were, under deduction of one-half fees of conveyance of lots 1 and 8, £ , paid to the said [bondholders], in extinction *pro tanto* of their security for £ .

That the petitioner has received the price of said lots, 2, 5, 6, and 7, amounting to £ , and after deducting the half expense of the conveyance in favour of the said purchaser, £ , the balance of said price, amounting to £ , was, on , consigned in the Bank on a deposit receipt in name of the petitioner, for behoof of the parties legally entitled thereto.

In conformity with the provisions of sec. 116 of the foresaid Act, the petitioner has made up and herewith submits

to your Lordship a scheme of ranking and division of the claims of the heritable creditors on the price of the said heritable subjects so sold, and belonging to the said sequestrated estate, in order that the same may be approved of, and warrant granted for payment in terms thereof.

The only persons interested herein, other than the said [bondholders], are , who held a bond and disposition in security for £ over the said subjects, postponed to that of the said [bondholders].

May it therefore please your Lordship to appoint this petition to be served upon the following parties mentioned in said scheme, viz.:—The said , and the tutors and curators of such of them as are pupils or minors, if they any have, for their interest herein, and to ordain them to lodge answers hereto, if so advised, within six days thereafter, and to appoint such further intimation and inquiry, if any, as to your Lordship may seem proper; and thereafter, on resuming consideration hereof, with or without answers, to approve of the said scheme of ranking and division, and to grant warrant to and authorise the petitioner to uplift the consigned sum, and the interest accrued thereon, and to apply it in terms of the said scheme, under deduction of the expenses and commission specified in the said scheme, and the expenses incurred in reporting said scheme to the Court, and obtaining judgment thereon, as the said expenses shall be taxed by the Auditor, and to authorise the said Bank to make payment to the petitioner accordingly; or to do otherwise as to your Lordship may seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

APPENDIX.

A scheme of ranking and division of the claims of the heritable creditors on the estate of [here follows scheme].

38. Another Form of Petition for Approval of Scheme.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of , chartered accountant, Edinburgh, trustee on the sequestrated estates of ,

Humbly sheweth—

That the estates of the said were sequestrated by the Court of Session on , and the petitioner was on confirmed trustee on said estates. The said [bankrupt] was at the date of said sequestration proprietor of the heritable subjects forming Nos. Street, Edinburgh.

That the petitioner, in virtue of sec. 113 of the Bankruptcy (Scotland) Act, 1856, with consent of the commissioners on the said sequestrated estate, and also with consent of the following creditors holding heritable securities over the said heritable subjects, viz.:—(1) , Edinburgh, sole surviving and acting trustee under the ante-nuptial contract of marriage between , some time residing at No. Street, Edinburgh, and Mrs. , his wife; (2) , Edinburgh, sole surviving trustee acting under the trust disposition and settlement of the deceased , some time residing in Street, , afterwards at , there; and (3) executor-dative *qua* next-of-kin of , exposed the said subjects to sale by public roup on the day of , and the same were purchased at the price of £ by .

That on delivery of a disposition of the said subjects by the petitioner, with consent of and , the commissioners on said sequestrated estate, and also with consent of (1) the said as trustee foresaid, (2) the said as trustee foresaid, and (3) the said as executor foresaid, the said price of £ was on duly paid by the said .

In conformity with the provisions of sec. 116 of the foresaid Act, the petitioner has made up and herewith submits to your Lordship a scheme of ranking and division of the claims of the heritable and other creditors on the price of the said heritable subjects so sold, and belonging to said sequestrated estate. The said scheme has been prepared in accordance with an agreement, herewith produced, dated , entered into between (1) the petitioner, and (2) Messrs. , W.S.,

Messrs. , W.S., and Messrs. W.S., as acting on behalf of and taking burden for their respective clients, the said heritable creditors.

May it therefore please your Lordship, after such intimation and inquiry as to your Lordship may seem proper, to approve of the said scheme of ranking and division, and to grant warrant to and authorise the petitioner to apply the said price in terms of the said scheme, under deduction of the expenses of preparing the said scheme and reporting the same to the Court, and obtaining judgment thereon, as the said expenses shall be taxed by the Auditor; or to do otherwise as to your Lordship shall seem just.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

APPENDIX.

Scheme of ranking and division of the claims of the heritable and other creditors, on the following heritable estate belonging to , viz., the subjects Nos. Street, Edinburgh, on the price of said subjects, made up by , C.A., Edinburgh, trustee on the sequestrated estates of the said

I.—Funds realised.

[Detail here.]

II.—Ranking of heritable creditors on said available balance.

[Detail here.]

Humbly reported by

, Trustee.

PROCEDURE.

The petition (which ought to be in manuscript, unless more than three copies are required for service) will be lodged with a process in which the scheme is included as a step. The first order will be—The Lord Ordinary having considered the petition, with the writs produced, appoints the trustee to intimate in the *Edinburgh Gazette* and by circular letter to all the creditors in the sequestration that he has made up a scheme of ranking and division of the price of the heritable property sold by him, and reported said scheme to the Lord

Ordinary in order that the same may be approved of and a warrant granted for payment in terms of the Bankruptcy (Scotland) Act, 1856; and allows all concerned to appear for their interest, if so advised, within ten days after such intimation.

On expiry of the induciæ, there will be lodged, with an inventory, copy of the *Gazette* and of the circular, having certificate of postage annexed.

The next deliverance will be—The Lord Ordinary, having resumed consideration of the petition, with the writs produced, approves of the scheme of ranking and division (No. of process) of the price of the heritable property among the heritable creditors respectively of [bankrupt], sold by the petitioner as trustee: Grants warrant for payment out of the said price of the several amounts set forth in said scheme and for which the said creditors are hereby ranked, and decerns—all in terms of the Bankruptcy (Scotland) Act, 1856, sec. 116.

Should answers have been lodged, or verbal objections stated, notice of same and of discussion will be taken in the interlocutor, which may either grant or refuse the prayer of the petition.

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39. Petition for Warrant to Apprehend Bankrupt who is Furth of Scotland but within the United Kingdom.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B., trustee on the sequestrated estates of C. D.,

Humbly sheweth—

That on [date] the estates of the said C. D. were sequestrated by your Lordship in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, and the petitioner was on [date] duly confirmed as trustee on said estates.

That on [date] the petitioner, as trustee foresaid, applied to the Sheriff of to name a day for the public examination of the said bankrupt, and for a warrant on the bankrupt ordaining him to attend for such examination, all in terms of sec. 87 of the said Bankruptcy (Scotland) Act), 1856, on which

application the Sheriff-Substitute pronounced the following deliverance:—[insert deliverance].

That the said deliverance was advertised in the manner prescribed by the said statutes, and diligent inquiries were made for the bankrupt for the purpose of citing him to attend at said diet for examination, but he could not be found.

That the petitioner has reason to believe that the bankrupt is at present in [state country], and he accordingly makes the present application to your Lordship for warrant to apprehend him and have him transmitted to the place of examination, and for enforcement of said warrant, all in terms of the 89th section of the said Bankruptcy (Scotland) Act, 1856.

May it therefore please your Lordship, on considering this petition, with productions made, to grant warrant to all judges, magistrates, justices of the peace, and officers of the law, to apprehend and transmit the said C. D., if he be in any part of Great Britain or Ireland, other than Scotland, to , the place of his examination, and to enforce the same, and to require them so to do—all in terms of sec. 89 of the Bankruptcy (Scotland) Act, 1856.

According to Justice, &c.

[Signed by Counsel, Agent, or Petitioner.]

The above petition is lodged with a process, and an order will be granted in terms of the prayer. A certified copy of the petition, with certified copy of the order attached, is the officer's warrant to arrest and transmit. In some cases the petition has been presented without a process and the interlocutor written on the petition itself, which was then borrowed and used as the warrant to arrest. The certified copy is, however, quite sufficient, and should be used in place of the principal, which ought to remain in process.

40. Petition under the 86th Section of the Bankruptcy (Scotland) Act, 1856, by a Creditor or Party interested to have Trustee ordained to Account.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B. [*design creditor or other party interested*],

Humbly sheweth—

1. [State award of sequestration and election of trustee and commissioners.]

2. [Quote sec. 86.]

3. [State grounds on which the petitioner desires to call the trustee or commissioners to account.]

4. [State grounds of refusal of trustee and commissioners to account to the petitioner in terms of the statute.]

The prayer is as follows:—

May it therefore please your Lordship to appoint a copy of this petition and of the deliverance following hereon to be served upon the said [trustee], and to appoint him to lodge a notice of appearance [or answers] in common form within a certain short induciæ, and on again advising this petition, to decern and ordain the said [trustee] to account for his intromissions as trustee foresaid with the funds and property belonging to the sequestrated estate of [and if the petitioner has a preferable claim on said estate such as for costs or otherwise], and to pay to the petitioner the sum of £ out of the funds of said sequestrated estate—all in terms of sec. 86 of the Bankruptcy (Scotland) Act, 1856; and to find the said [trustee] liable to the petitioner in expenses; or to do otherwise as to your Lordship shall seem just.

According to Justice, &c.

Procedure.

1. Intimation to trustee on fourteen days' induciæ.
2. Answers lodged.
3. Order for hearing.
4. Judgment after debate, either granting, refusing, or allowing a proof.

41. Petition to re-insert "Gazette" Notices, owing to Error in Notices already inserted.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B., with concurrence of C. D., a creditor of the said A. B.,

Humbly sheweth—

That the estates of the petitioner, the said A. B., were sequestrated by the Court of Session on , and that in terms of a deliverance of that date a meeting of the petitioners' creditors was held in on , for the purpose of electing a trustee and commissioners, at which meeting was duly elected trustee.

Following on said sequestration the statutory notices were inserted in the *Edinburgh* and *London Gazettes* of current, which notices intimated that "to entitle creditors to the first dividend, their oaths and grounds of debt must be lodged on or before the 8th day of September, 19 ," while the date ought to have been "the 8th day of July, 19 ." In these circumstances it is necessary that a fresh notice should be inserted in the said *Gazettes* setting forth the correct date upon which claims and grounds of debt must be lodged to entitle creditors to the first dividend.

May it therefore please your Lordship to grant authority to the petitioner to insert the following advertisement in the *Edinburgh Gazette* of , and to substitute the same for the notice which appeared in the *Edinburgh Gazette* of :—"Notice—To the creditors of A. B. [design him], To entitle creditors to the first dividend, their oaths and grounds of debt must be lodged on or before the 8th day of July, 19 , instead of 8th September, 19 , which latter date was inserted in the *Edinburgh Gazette* on ," and to hold the insertion of said advertisement in the *Edinburgh Gazette* alone as being sufficient for all purposes, and as if it had also been inserted in the *London Gazette;* or to do further or otherwise in the premises as to your Lordship may seem proper.

According to Justice, &c.

[Signed by Petitioner's Agent.]

DELIVERANCE.

EDINBURGH, .—The Lord Ordinary officiating on the Bills, having considered the petition for A. B., No. of process, and heard counsel for the petitioner, grants authority to the petitioner to insert an advertisement in the *Edinburgh Gazette* of this date in substitution for the notice which appeared in the *Edinburgh Gazette* of 12th March last, such new and substituted notice being addressed to the creditors on the petitioner's sequestrated estate, and being to the effect that to entitle creditors to the first dividend, their oaths and grounds of debt must be lodged on or before the 8th day of July, 19 , instead of 8th September, 19 , which latter date was inserted in the *Edinburgh Gazette* of 12th March, 19 . Further, holds the insertion of the said advertisement of this date in the *Edinburgh Gazette* alone as being sufficient for all purposes, and as if it also had been made in the *London Gazette*.

Note.—The above petition was lodged in original sequestration process.

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42. PETITION TO LORD ORDINARY OFFICIATING ON THE BILLS IN VACATION FOR POWER TO INSERT "GAZETTE" NOTICES, THE SAME HAVING BEEN OMITTED TO BE INSERTED.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B., residing at , with concurrence of C. D., creditor of the said A. B., residing at ,

Humbly sheweth—

That of this date a petition, at the instance of the petitioner A. B., with concurrence of the said C. D., was presented in the Sheriff Court of , praying for sequestration of the estates of the said E. F.

That of this date the Sheriff-Substitute sequestrated the said estates, appointed a meeting of creditors to elect a trustee and commissioners, to be held within the , on , the day of 19 , at o'clock noon.

That an abbreviate of the said petition and deliverance thereon was thereafter duly presented to the Keeper of the Register of Inhibitions at Edinburgh, and recorded in said

Register in terms of the statute, but the notices of the deliverance awarding sequestration, and of the meeting to elect a trustee, were omitted to be inserted in the *Edinburgh Gazette* and the *London Gazette*, as is required by sec. 48 of the Bankruptcy Act, and thus the meeting to elect a trustee could not be held.

In these circumstances it is necessary that a new meeting be appointed, and that authority be obtained to insert new notices in the *Gazettes*.

May it therefore please your Lordship to order intimation of the said award of sequestration to be made in the *Edinburgh* and *London Gazettes* within four and six days respectively after the date of such order, and to fix , the day of , 19 , at o'clock, within the , at , as the day, hour, and place for holding the meeting for the election of the trustee and commissioners on said estates, and to appoint intimation of the same to be made in said *Gazettes*, and to remit to the Sheriff of to proceed further in the matter, in terms of the Bankruptcy statutes; or to do further or otherwise as to your Lordship shall seem proper.

According to Justice, &c.

INTERLOCUTOR.

EDINBURGH, .—The Lord Ordinary officiating on the Bills, having considered the petition and proceedings, appoints intimation of the award of sequestration of the estates of the petitioner A. B., designed in the petition, to be made in the *Edinburgh* and *London Gazettes* within four and six days respectively after the date of this order; appoints a meeting of the creditors of the said A. B. to be held upon , the day of , 19 , at o'clock, within the at , for the purpose of electing a trustee and commissioners upon the sequestrated estates of the said A. B., in conformity with the provisions of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same; appoints intimations of said meetings also to be made in the said *Gazettes;* further, of new remits to the Sheriff of , at , to proceed further in the matter, in terms of the said Bankruptcy statutes.

[See note at end of next form.]

43. Petition for Warrant to Record Abbreviate which has been omitted *per incuriam*—Presented in Vacation to Lord Ordinary on the Bills.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B., petitioning creditor in the sequestration of C. D., and E. F., accountant, trustee on the sequestrated estates of the said C. D.,

Humbly sheweth—

That of this date the first-named petitioner presented a petition to the Sheriff of at for sequestration of the estates of the said C. D., and that on the same date the Sheriff-Substitute pronounced the usual deliverance granting a warrant to cite the said debtor, and appointing him to appear and shew cause why sequestration should not be awarded.

That subsequently sequestration of the estates of the said C. D. was awarded, and thereafter the second-named petitioner was elected and duly confirmed trustee thereon.

That by sec. 48 of the Bankruptcy (Scotland) Act, 1856, it is provided as follows:—[take in section].

That *per incuriam* the period prescribed by the foregoing enactment for presenting to the Keeper of the Register of Inhibitions, and having recorded in said Register an abbreviate of the said petition and deliverance, was allowed to elapse without the said abbreviate being presented.

That the statutory enactment having been thus omitted, the present application to your Lordship has become necessary.

May it therefore please your Lordship to grant warrant to the Keeper of the Register of Inhibitions at Edinburgh for recording, before the expiration of the second lawful day after the date of your Lordship's interlocutor, an abbreviate of the petition for sequestration signed by the petitioner, the said A. B., or his agent, in the Register of Inhibitions, and for writing and subscribing a certificate thereof on said abbreviate in the prescribed form; or to do otherwise in the premises as to your Lordship shall seem meet.

According to Justice, &c.

[Petitioner's Agent.]

DELIVERANCE.

EDINBURGH, .—The Lord Ordinary officiating on the Bills, having considered the petition and proceedings, grants warrant to the Keeper of the Register of Inhibitions at Edinburgh for recording, before the expiration of the second lawful day after the date of this interlocutor, an abbreviate of the petition for sequestration signed by the petitioner A. B., or his agent, in the Register of Inhibitions, and for writing and subscribing a certificate thereof on the said abbreviate in the prescribed form, and this upon a certified copy of this interlocutor.

Note.—Petitions of the nature of the two preceding forms ought properly to be printed, signed by counsel, boxed, and presented to one of the Divisions, and dealt with by the Lord Ordinary in vacation as Inner House applications. Applications in manuscript form have, however, been dealt with in vacation as Bill Chamber petitions. The course first above indicated is, however, the correct procedure.

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44. PETITION TO UPLIFT CONSIGNED DIVIDEND.

Unto the Honourable the Lord Ordinary officiating on the Bills.

The Petition of A. B.,

Humbly sheweth—

That sequestration of the estates of C. D. was awarded in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same, of this date , and that, after sundry steps of procedure, E. F. was duly elected and confirmed trustee thereon. The said trustee called a final meeting of the creditors, and thereafter lodged the sederunt book with the Accountant of Court, and accordingly is now in a position to apply for his discharge and be discharged of his office of trustee.

That the petitioner is a creditor on the estate of the said C. D., and was ranked thereon for a debt of £ .

That the said trustee deposited in bank the whole unclaimed dividends in the sequestration and, *inter alia*, unclaimed dividends due to the petitioner of £ sterling and £ , amounting together to £ , which is

duly entered in the petitioner's name in the Register of Unclaimed Dividends kept by the Accountant of Court, in terms of the Bankruptcy Acts.

That the petitioner, owing to his not having received any notice of the declaration of the dividends, did not apply for payment of said dividends prior to the final meeting of creditors, but is now desirous of uplifting the same.

May it therefore please your Lordship, after such inquiry as your Lordship may deem proper, to authorise and ordain the Accountant of Court to produce and exhibit the deposit receipt for the unclaimed dividends in the said sequestration, and to grant warrant upon the Bank to make payment to , the mandatories of the petitioner, of the said sum of £ , and that upon production of a certified copy of your Lordship's interlocutor; or to do further or otherwise in the premises as to your Lordship shall seem proper.

According to Justice, &c.

FIRST DELIVERANCE.

EDINBURGH, .—The Lord Ordinary, having considered the petition, together with the mandate in favour of , remits to the Accountant of Court to inquire into the circumstances set forth in the petition, and to report.

REPORT BY ACCOUNTANT OF COURT.

The Accountant of Court, in terms of the foregoing interlocutor, has inquired into the circumstances set forth in the petition, and he finds that they are correctly stated. The dividends, amounting to £ , are due to the said A. B., and in the Accountant's opinion, warrant for this payment may be granted as craved.

[Signed by Accountant of Court.]

SECOND DELIVERANCE.

EDINBURGH, .—The Lord Ordinary, having resumed consideration of the petition and proceedings, with report by the Accountant of Court, No. of process, in respect of said report and of the receipt by the petitioner, No. of process, authorises and ordains the Accountant of Court to exhibit and produce the deposit receipt for the unclaimed

dividends in the sequestration of C. D. mentioned in the petition; grants warrant upon the Bank to make payment to the petitioner of the sum of £ sterling, the sum mentioned in the petition, and that upon production of a certified copy of this interlocutor and delivery of the said receipt, No. of process, and decerns: authorises the said Bank to place the interest accrued on the said deposit receipt to the interest account of unclaimed dividends, kept in terms of the 153rd section of the Bankruptcy (Scotland) Act, 1856.

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45. Complaint by Accountant of Court as to conduct of a Trustee.

Report by the Accountant of Court submitted to the Honourable the Lord Ordinary as to the conduct of A. B., C.A., Edinburgh, trustee on the sequestrated estate of C. D. [*design*].

The estates of the said C. D. were sequestrated of this date by the Court of Session, and the said A. B. was of this date confirmed trustee.

The trustee has failed to transmit copies of the accounts in continuation of those ending [date], in contravention of sec. 84 of the Bankruptcy (Scotland) Act, 1856.

He has also failed to exhibit the sederunt book to the Accountant when called on by the Accountant to do so, in terms of sec. 150 of said Act. He has been repeatedly called upon to transmit the accounts and to exhibit the sederunt book, and to explain his failure to do so, conform to letters of these dates , of which copies are herewith produced. No reply has been received from the said trustee.

Sec. 161 of the Bankruptcy Act of 1856 is as follows:—

"The Accountant shall at all times when requisite report to the Lord Ordinary, or either Division of the Court, any disobedience by the trustee or commissioners of any requisition or order by him, and generally any matter which he may deem it necessary for the due discharge of his office to bring before the Lord Ordinary or the Court, and it shall be competent for the Lord Ordinary or the Court to deal summarily with the matter reported as accords of law."

In terms of the above-quoted section, and in consequence of the trustee's continued failure to produce the documents called for and give explanations, the Accountant now submits the circumstances to your Lordship, and craves your Lordship to deal with the matter in accordance with secs. 158 and 161 of the Bankruptcy Act.

[Signed by the Accountant.]

PROCEDURE.

1st Order—Intimation and service on trustee, and answers to report ordered in eight days.

The respondent having failed to lodge answers, or to take any notice of the report, the following minute was lodged by the Accountant:—

The Accountant of Court has respectfully to report to the Lord Ordinary that the said A. B. has failed to lodge answers in accordance with the interlocutor pronounced on [date], and he therefore humbly craves your Lordship to appoint the said A. B. to appear before you at such time and place as to your Lordship shall seem fit, and after hearing the said A. B., to ordain him to obtemper the order of the Accountant of Court within a reasonable time, and to find him liable in expenses.

[Signed by Accountant.]

2nd Order—The Lord Ordinary officiating on the Bills, having considered the minute for the Accountant of Court, No. of process, appoints A. B. [design], trustee on the sequestrated estates of the said C. D. [design], to appear before him in the Parliament House, upon the day of , at o'clock noon, to shew cause why he has failed to obtemper the orders of the Accountant of Court, as set forth in the report, No. of process; further, appoints a copy of the said minute and of this interlocutor to be served on the said A. B., not later than four days prior to the date of said compearance.

At the diet the trustee appeared, and made explanations and apology for delay, and the following interlocutor was pronounced:—

The Lord Ordinary officiating on the Bills, having called the cause, and the trustee, A. B., having voluntarily appeared

and made certain explanations regarding the matters complained of in the report by the Accountant of Court, No. of process, the Lord Ordinary duly censured him for failing to obey the said orders, and ordains the said A. B., within twenty-one days from this date, to obtemper the said orders—all as contained in the said report under certification, reserving meantime all questions of expenses.

Note.—The above report was lodged with a separate process, not in the original sequestration proceedings.

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46. Form of Oath of Verity.

1. *Living Debtor.*

At , the day of , in presence of , one of His Majesty's justices of the peace for the county of : compeared [design] who, being solemnly sworn and interrogated, depones: that [design debtor] is justly indebted and resting owing to the deponent in the sum of £ , being amount contained in [specify document of debt]: depones that no part of said sum has been paid or compensated; and that the deponent holds no other person than the said [debtor] bound for the debt, and holds no security for same; all which is truth, as the deponent shall answer to God.

(Signed)
(„) J.P.

2. *Deceased Debtor.*

At , the day of , in presence of , one of His Majesty's justices of the peace for the county of : compeared [design] who, being solemnly sworn and interrogated, depones: that [design debtor], now deceased, was at the date of his death justly indebted and resting owing to the deponent in the sum of £ , being amount of account [specify nature of account] commencing on , and ending on : depones: that the said at the time of his death resided or had a dwelling-house [or carried on business] at , and was at that time the owner of estate in Scotland: depones: that no part of said sum has been paid or compensated, and that deponent holds no other person than the said deceased

bound for the debt, and holds no security for same; all which is truth, as the deponent shall answer to God.

(Signed)
(„) J.P.

Note.—For variations in form, see under "Oaths of Verity," page 361. If the creditor has recourse against any person other than the debtor (*e.g.*, a joint and several obligant) a declaration to that effect must be inserted instead of declaring that he holds no other person liable.

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47. Form of Bond of Caution by Judicial Factor Appointed on Sequestrated Estate Pending Trustee's Appointment.

[The bond is prepared in the Bill Chamber, is approved by the Clerk of the Bills, and, when executed, remains in his custody.]

I, , considering that upon a petition given in and presented to the Honourable the Lord Ordinary officiating on the Bills, for and in name of , praying for
Lord , Ordinary, on the
nominated and appointed me, the said , to be judicial factor on the said estates, with the powers necessary for the preservation of the same, including the power to recover debts, I always finding caution before extract in usual form; and seeing that I am willing to accept of the said factory, and to find caution in terms of the Lord Ordinary's deliverance: Therefore I, the said as principal, and as cautioner, surety, and full debtor for and with me, bind and oblige ourselves, conjunctly and severally, our heirs, executors, and successors whomsoever, that I, the said , shall do exact diligence in performing my duty as factor on the estates before mentioned, and shall render a just account of my management and intromissions with the funds of the said estate, and shall account and pay whatever sum or sums of money as shall be found justly due and resting owing by me as factor foresaid, and that to such person or persons as shall be found to have best right thereto, and that I shall perform and observe every other duty incumbent upon me as factor

foresaid, or that I shall be liable to in law, and I, the said , bind and oblige me and my foresaids to free and relieve my said cautioner and his foresaids of their cautionary obligation in the premises, and of all costs, skaith, damage, interest, and expenses they may sustain or incur thereby in any manner of way; and we, both principal and cautioner, consent to the registration hereof in the books of Council and Session, that letters of horning on six days' charge, and all other legal execution needful, may pass hereon in common form as effeirs, and thereto constitute procurators. In witness whereof, these presents, written by Clerk of the Bills and Sequestrations (so far as the same are not printed), are subscribed, &c.

Form of Certificate, to be holograph of, and signed by, a Justice of Peace or Magistrate.

[Place and date.]

I, [one of His Majesty's justices of peace for the county of ; or one of the magistrates of , as the case may be], hereby certify that , the within-designed cautioner, is habit and repute responsible for the obligations contained in the within bond.

A. B., J.P., or Magistrate.

Note.—No attestation by agent for the petitioner is required.

"GAZETTE" NOTICES.

Notice of First Deliverance.

A petition having been presented to the Lord Ordinary officiating on the Bills, at the instance of , for sequestration of the estates of A. B. & Co., and C. D. & E. F., the individual partners of said firm as such partners and as individuals, his Lordship of this date granted warrant for citing the said to appear in Court on the seventh day next after citation if within Scotland, and on the twenty-first day next after citation if furth of Scotland, to shew cause why sequestration should not be awarded; of all which intimation is hereby given.

S.S.C., Street, Edinburgh, Agent.

Notice of Award.

The estates of , residing at , in the county of Mid-Lothian, were sequestrated on the 29th day of December, 1900, by the Court of Session. The first deliverance is dated the 19th day of December, 1900.

The meeting to elect the trustee and commissioners is to be held at half-past twelve o'clock afternoon on Wednesday, the 9th day of January, 1901, within Dowell's Rooms, No. 18 George Street, Edinburgh.

A composition may be offered at this latter meeting; and to entitle creditors to the first dividend, their oaths and grounds of debt must be lodged on or before the 29th day of April, 1901. The sequestration has been remitted to the Sheriff of the Lothians and Peebles, at Edinburgh.

All future advertisements relating to this sequestration will be published in the *Edinburgh Gazette* alone.

, W.S., Edinburgh, Agents.

Notice of Bankrupt's Examination, &c.

Sequestration of residing at No. . , chartered accountant, Edinburgh, has been elected trustee on the estate; and , and , both of Edinburgh, and , Leith, have been elected commissioners. The examination of the bankrupt will take place in the Sheriff Court-house on Tuesday, the 8th day of January, 1901, at two o'clock afternoon. The creditors will meet in the chambers of Messrs. , C.A., , Edinburgh, on Thursday, the 17th day of January, 1901, at eleven o'clock forenoon.

, C.A., Trustee, Edinburgh.

Notice of Offer of Composition.

As trustee on the sequestrated estates of , Rutherglen, and and , the sole or only known partners of said firm, I hereby intimate that a meeting of the creditors will be held within the chambers of Messrs. , C.A., , Glasgow, on Friday, 11th January next, at twelve o'clock noon, for the purpose of finally deciding on an offer of composition and security therefor, which was entertained by resolution of meeting of creditors held on 17th December, 1900.

, C.A., Trustee.

NOTICE OF MEETING AS TO DEED OF ARRANGEMENT.

In the sequestration of and , sole partners, carrying on business under the name of , as such partners and as individuals, and also of the said firm, , C.A., Edinburgh, trustee, hereby calls a general meeting of the creditors, to be held within his chambers, Street, Edinburgh, on Wednesday, the 9th day of January current, at eleven o'clock forenoon, for the purpose of passing a resolution that the estate be wound up under deed of arrangement, and for doing any other acts competent under the Bankruptcy statutes.

, C.A.

Edinburgh, 1st January, 1901.

NOTICE OF MEETING TO DECIDE ON OFFER OF COMPOSITION.

Sequestration of and there, the individual partners of said firm of , as such partners and as individuals.

, accountant, Glasgow, trustee on above estate, hereby intimates that at a meeting of creditors held on 17th June, 1900, the bankrupts offered to the creditors a composition of five shillings per pound, payable at three and six months after their discharge, with security, and that the creditors present unanimously entertained said offer for consideration—one-half of said composition has since been paid; and notice is hereby given that said offer will be decided on at a meeting to be held in the trustee's office, , Glasgow, on Saturday, 12th January, 1901, at eleven o'clock forenoon.

, Trustee.

NOTICE OF MEETING TO CONSIDER SPECIAL CLAIMS.

In the sequestration of , some time residing at , I, , chartered accountant, Edinburgh, trustee on the sequestrated estates of the said , , hereby call a general meeting of creditors, to be held within Dowell's Rooms, No. 18 George Street, Edinburgh, on Wednesday, the 16th day of January, 1901, at eleven o'clock forenoon, for the purpose of considering the claims lodged by the liquidators of —(1) For

£ , in respect of dividends alleged to have been paid by out of capital; (2) for £ , in respect of the guarantee by the bankrupt, under 9th section of the agreement between and the partners thereof, as such partners and as individuals, and , dated 5th March, 1896:—and resolving on the course to be adopted in regard to the claims.

, C.A., Trustee.

Street, Edinburgh, 4th January, 1901.

NOTICES OF MEETING AS TO TRUSTEE'S DISCHARGE.

Sequestration of , Edinburgh.

I hereby intimate that an account of my intromissions with the funds of the estate, brought down to 5th December last, has been audited by the commissioners, and there being no funds available for division among the creditors, no dividend will be paid. A meeting of creditors will be held within my chambers on Monday, 28th January, 1901, at eleven o'clock forenoon, to consider as to an application for my discharge as trustee.

, Trustee.

Street, Edinburgh.

Sequestration of , carrying on business as in Edinburgh, and , Edinburgh, sole partner of said company, as such partner and as an individual.

The trustee hereby calls a general meeting of creditors herein, to be held in his chambers, , Edinburgh, on Tuesday, 12th February, 1901, at eleven o'clock forenoon, to consider as to an application to be made for his discharge as trustee.

, Trustee.

Street, Edinburgh, 18th January, 1901.

NOTICE OF POSTPONEMENT OF DECLARATION OF DIVIDEND.

In the sequestration of . The trustee hereby intimates that, in terms of the statutes, accounts of his intromissions with the funds of the estate, brought down to the 20th ultimo, have been examined by the commissioners, who have postponed the declaration of a dividend until the recur-

rence of another statutory period, and dispensed with circulars to the creditors.

, Trustee.

Street, Glasgow, 3rd January, 1901.

NOTICE OF FIRST DIVIDEND.

In the sequestration of , lately carrying on business at , and Mrs. , wife of and residing with , lately at aforesaid, and sole remaining partner of said firm, as such partner and as an individual, solicitor, , trustee, hereby intimates that a first dividend will be paid at his chambers, , Kirkcudbright, on the 23rd day of February, 1901.

, Trustee.

Kirkcudbright, 4th January, 1901.

NOTICE OF ACCELERATION OF DIVIDEND.

In the sequestration of , tea merchant, , Glasgow, carrying on business there and elsewhere in Glasgow, under the name or style of , of which he is the sole partner, and also carrying on business in . , chartered accountant, , Glasgow, trustee, hereby intimates that the Sheriff of Lanarkshire has accelerated payment of the first dividend under this sequestration by authorising the same to be made on the expiration of four months from the date of the deliverance actually awarding sequestration, and that accordingly the claims of the creditors must be duly lodged with the subscriber on or before the 6th day of March, 1901, in order to participate in said dividend.

, C.A., Trustee.

NOTICE OF SECOND DIVIDEND.

In the sequestration of . , chartered accountant, trustee, hereby intimates that a second dividend, and also an equalising dividend, will be paid at his chambers, No. Street, Glasgow, on the 28th day of February, 1901.

, C.A., Trustee.

Glasgow, 10th January, 1901.

NOTICE OF SALE OF BANKRUPT'S BOOK DEBTS.

Sequestration of , drapers and house furnishers, , Edinburgh, and , draper and house furnisher there, the sole partner of said firm, as such partner and as an individual.

I hereby intimate that the remaining outstanding book debts on this estate will be exposed for sale by public roup within the chambers of Messrs. , Edinburgh, on Monday, the 18th day of February, 1901, at three o'clock afternoon.

, Trustee.

Street, Edinburgh, 15th January, 1901.

NOTICE OF MEETING TO ELECT NEW COMMISSIONER.

Sequestration of .

, trustee on the sequestrated estate of , hereby calls a meeting of the creditors, to be held within Hotel, Ardrossan, on the 4th day of February, 1901, at 3-30 o'clock afternoon, for the purpose of electing a commissioner in the room of , now deceased.

, Trustee.

Street, Glasgow, 24th January, 1901.

NOTICE OF APPOINTMENT OF NEW TRUSTEE.

Sequestration of .

, accountant, Glasgow, has been elected trustee on the estate, in room of , accountant, Glasgow, deceased.

Solicitors,
Glasgow, Agents for the Trustee.

Street, Glasgow, 12th January, 1901.

NOTICES OF PETITIONS FOR VESTING ORDER.

In the sequestration of , now deceased, one of the partners of the firm of , Dumfries, as such partner and as an individual.

Notice is hereby given that a petition has been presented to the Lord Ordinary officiating on the Bills by , trustee on the sequestrated estate of the said , as such

partner and as an individual foresaid, to have it declared that all right and interest in the share of the moveable estate of the deceased Mrs. , the wife of the bankrupt, to which the said became entitled on her death, vested in the said as trustee foresaid, as at the date of the bankrupt's succession thereto, in terms of and for the purposes specified in sec. 103 of the Bankruptcy (Scotland) Act, 1856; in which petition Lord has pronounced an interlocutor in the following terms:—"16th January, 1901.—Lord .—*Act*
The Lord Ordinary appoints intimation of the petition to be made to designed in the petition, and ordains him to lodge answers thereto, if so advised, within eight days after intimation; further, appoints intimation of the petition to be made in the *Edinburgh Gazette*, and appoints all concerned to appear for their interest, if so advised, within said period."

Of all which intimation is hereby made.

, S.S.C., Agent for Petitioner.

22nd January, 1901.

Notice is hereby given that a petition has been presented to the Lord Ordinary officiating on the Bills (Mr. , clerk), at the instance of , C.A., Glasgow, trustee on the sequestrated estates of and there, the sole partner of said firm, as such partner and as an individual, craving the said Lord Ordinary to declare all right and interest in (1) ALL and WHOLE that two-storey tenement, with attics, belonging to the late , and situated, &c.; and (2) one-third of one-half of the moveable estate of the deceased Mrs. , who resided at No. Street, and who died on 23rd February, 1901, which now belongs to the said , to be vested in the petitioner as trustee foresaid, as at the date of the succession thereto of the said , all in terms of the 103rd section of the Bankruptcy (Scotland) Act, 1856; on which petition the Lord Ordinary has been pleased to pronounce the following interlocutor:—[Quote].

Of all which intimation is hereby given.

, Agents for Petitioner.

Edinburgh [date].

NOTICE OF MEETING AS TO PURCHASE OF POLICIES.

As trustee on the sequestrated estate of , some time residing at , Edinburgh, and now residing at ,

I hereby call a meeting of the creditors in the sequestration, to be held within the chambers of Messrs. , C.A., Street, Edinburgh, on Thursday, the 31st day of January, 1901, at 3-30 p.m., for the purpose of deciding as to the purchase of policies of assurance on the life of the bankrupt and thereanent.

, C.A., Trustee.

Edinburgh, 21st January, 1901.

NOTICE OF MEETING AS TO SALE OF HERITABLE PROPERTY.

In the sequestration of , Street, Glasgow, and residing at . I, chartered accountant, Glasgow, trustee on the sequestrated estates of the said , hereby call a general meeting of creditors, to be held in the trustee's chambers, Street, Glasgow, on Monday, the 18th day of February, 1901, at twelve o'clock noon, for the purpose of considering and resolving upon the disposal of the bankrupt's heritable property.

, Trustee.

Glasgow, 24th January, 1901.

NOTICE OF EXPOSURE OF HERITABLE PROPERTY.

In the sequestration of , Street, Glasgow, and residing at .

At a meeting of the creditors of the said held in the trustee's chambers, Street, Glasgow, on Monday, 18th February, 1901, it was unanimously resolved to offer the bankrupt's heritable property, consisting of the subjects known as , for sale, by public roup, at the upset price of £ . The exposure is to take place within the Faculty Hall, St. George's Place, Glasgow, on 27th March, 1901, at two o'clock afternoon.

, Trustee.

NOTICE OF ALTERATION OF DATES OF DIVIDENDS.

Sequestration of , residing some time at , thereafter at , and at present .

, trustee on the sequestrated estate of above designed, hereby intimates that the Sheriff of Lanarkshire, at Glasgow, has altered the periods specified in the Bankruptcy (Scotland) Act, 1856, for payment of dividends, by appointing the 1st day of August, 1901, as the date for payment of the first dividend after the date hereof, and that subsequent dividends shall be made on the first lawful day after the expiration of every six months from the day of payment of the immediately preceding dividend, and by regulating correspondingly the various matters preparatory to the payment of dividends.

, C.A., Trustee.

Glasgow, 28th February, 1901.

NOTICE BY A COMMISSIONER CALLING MEETING.

I, , Perth, commissioner on the sequestrated estates of , some time , and now residing at , hereby call a meeting of the creditors, to be held within the , Perth, on Monday, 18th March, 1901, at three o'clock afternoon, for the purpose of removing from his office of commissioner on said estates, and to elect another in his place; to consider and give directions as to realisation of the bankrupt's heritable estate, and as to dealing with heritable securities granted by her; and as to a requisition by me to the trustee to assign his right and title to me as a creditor, to enable me to reduce these securities, and for any other competent business.

, Commissioner.

Perth, 7th March, 1901.

NOTICE AS TO ALIMENTARY ALLOWANCE TO BANKRUPT, &C.

's Sequestration.

A meeting of the creditors of will be held in the Hotel, Campbeltown, upon Tuesday, the 26th day of March, 1901, at four o'clock afternoon, for, *inter alia*, the following purposes, viz:—To consider as to the realisation and disposal of the outstanding moveable estate by valuation or otherwise. To consider and, if so advised, to authorise payment of an alimentary allowance to the bankrupt.

, Trustee.

Campbeltown, 8th March, 1901.

NOTICE OF BANKRUPT'S PETITION FOR DISCHARGE.

Sequestration of , commercial traveller, formerly residing at ; Glasgow, and now at , London, West. By virtue of an order of the Lord Ordinary officiating on the Bills, , above designed, hereby intimates that he has presented a petition to the Lord Ordinary officiating on the Bills, to be finally discharged of all debts contracted by him before the date of the sequestration of his estates, in terms of the statutes.

, S.S.C., Agent.

Edinburgh, 12th March, 1901.

NOTICE AS TO FURTHER EXAMINATION OF BANKRUPT, &c.

, solicitor, Inverness, trustee on the sequestrated estate of , Inverness, hereby calls a meeting of the creditors, to be held within the office of the trustee, No. , Inverness, on Friday, the 29th day of March current, 1901, at one o'clock afternoon, for (*a*) the purpose of considering and deciding upon a request made at last meeting for a further examination of the bankrupt; and (*b*) for the purpose of electing one commissioner in room and place of , Inverness, who has resigned his office as one of the commissioners on said estate.

, Trustee.

NOTICE OF MEETING AS TO TRUSTEE'S DISCHARGE.

, chartered accountant, Edinburgh, trustee on the sequestrated estate of , and formerly residing at , Edinburgh, hereby calls a meeting of the creditors on the said estate, to be held within the chambers of Messrs. , C.A., , Edinburgh, on Monday, the 8th day of April next, at 11 o'clock forenoon, to consider as to an application to be made for the trustee's discharge.

, C.A., Trustee.

Edinburgh, 14th March, 1901.

NOTICE OF MEETING TO CONSIDER SPECIAL MATTERS.

In the sequestration of , residing in . I, , C.A., Perth, trustee on the sequestrated estates of the said , hereby call a general meeting of creditors, to be held in my office, , Perth, on Wednesday, the

27th day of March current, at a quarter past twelve o'clock afternoon, for the purpose of considering and resolving upon—(*a*) pending litigation between me and Messrs. ; (*b*) alleged illegal preference by bankrupt over his heritage, and proposed litigation thereanent; (*c*) proposal and requisition by certain creditors that I should assign my right and title to them as creditors, to enable them to pursue litigations and get the benefit of alleged illegal preferences if reduced; (*d*) realisation of the bankrupt's heritage; and (*e*) any other competent business.

, Trustee.

Perth, 16th March, 1901.

Notice of Creditor's Petition for Recall of Sequestration.

, some time residing in , hereby gives notice that he has presented a petition to the Lord Ordinary officiating on the Bills, for recall of the sequestration of the executry estates of the deceased , some time in the county of , and latterly residing at , and the estates of and , as executors-dative of the said deceased , on which petition the following deliverance has been pronounced:—"Edinburgh, 19th March, 1901.—The Lord Ordinary appoints a copy of the petition and deliverance to be served as craved upon the persons named and designed in the petition, and requires them to lodge answers thereto, if so advised, within eight days after service; further, appoints a notice of the presentation of the petition to be published in the *Gazette*.

(Signed) " ."

, W.S.,

Agents for the Petitioner.

Edinburgh, 20th March, 1901.

Notice of Petition by Creditor for Election of New Trustee, &c.

A petition has been presented to the Lords of Council and Session (First Division,—Mr. , clerk) at the instance of , a creditor on the sequestrated estate of , some time in Dundee, now in Africa, or elsewhere furth of Scotland, praying their Lordships, *inter alia*, to

appoint a meeting of the creditors on the said sequestrated estates of the said , to be held at such time and place as their Lordships might fix, to elect a new trustee on said sequestrated estates, with the whole powers conferred by the statutes, and to authorise the advertisement of such meeting in the *Edinburgh Gazette;* in respect of which petition the Lord Ordinary on the Bills, under a remit from the Lords of the First Division, has appointed a meeting of the creditors on said sequestrated estates to be held on Friday, the 29th day of March, 1901, within , Dundee, at two o'clock afternoon, to elect a new trustee, or trustees in succession, and commissioners on said sequestrated estates, with the whole powers conferred by the statutes, and has authorised the petitioner to advertise a notice of said meeting in *Edinburgh Gazette;* of all which notice and intimation is hereby made accordingly.

, W.S.

, Street, Edinburgh, Petitioner's Agents.

21st March, 1901.

NOTICE CORRECTING ERROR IN DATE GIVEN IN FORMER NOTICE.

To the creditors of , Edinburgh, and residing at No. Street there.

To entitle creditors to the first dividend, their oaths and grounds of debt must be lodged on or before the 8th day of July, 1901, instead of 8th September, 1901, which latter date was inserted in error in the *Edinburgh Gazette* of 12th March, 1901. This notice is inserted all in terms of a deliverance by the Lord Ordinary officiating on the Bills, on a petition for authority to insert new advertisement presented by , of this date, 26th March, 1901.

, Solicitor.

Street, Edinburgh, Agent.

NOTICE OF DIVIDENDS FROM ESTATES OF FIRM AND INDIVIDUAL PARTNERS.

In the sequestration of , merchants, Street, Glasgow, and also carrying on business at and elsewhere in and and both merchants in Glasgow, the sole partners of said firm, as such partners and as individuals.

, chartered accountant in Glasgow, hereby intimates that a third dividend from the copartnery estate, and first and final dividend from the estates of the individual partners, to those creditors who did not formerly participate, will be paid within the chambers of Messrs. , C.A., Street, Glasgow, on Wednesday, the 15th day of May, 1901.

, Trustee.

Glasgow, 28th March, 1901.

Notice of Election of a Commissioner.

Sequestration of .

, solicitor, Inverness, has been duly elected a commissioner on the said sequestrated estates in place of , solicitor, Inverness, who resigned.

, Agent for , Trustee.

Inverness, 3rd April, 1901.

Notice of Petition for Election of New Trustee.

In the sequestration of Mrs. , some time residing at , Edinburgh, and thereafter at Street, Edinburgh, widow of the deceased , in the county of .

At a meeting of the creditors on the above estates held in Edinburgh on Saturday, the 6th April current, , Edinburgh, was removed from the office of trustee. In terms of the Bankruptcy (Scotland) Act, 1856, sec. 74, , chartered accountant, Edinburgh, a creditor on the said sequestrated estates, has presented a petition to the Sheriff of the Lothians and Peebles, at Edinburgh, for an order to hold a meeting of the creditors for the purpose of electing a trustee in place of said , and in which petition of this date an interlocutor was pronounced ordering a meeting of the creditors on the sequestrated estates of the said Mrs. , to be held in Dowell's Rooms, 18 George Street, Edinburgh, on Wednesday, the 17th day of April current, at twelve o'clock noon, to elect a trustee on the said sequestrated estates in room of the said .

, Agent for Petitioner.

Edinburgh, 8th April, 1901.

NOTICE OF APPLICATION TO ACCELERATE FIRST DIVIDEND.

In the sequestration of the deceased .

I, , chartered accountant, Glasgow, trustee on the sequestrated estates of the said deceased , hereby call a general meeting of creditors, to be held in my chambers, Street, Glasgow, on Friday, the 26th day of April, 1901, at twelve o'clock noon, for the purpose of considering and resolving upon an application to the Sheriff of the County of Lanark for authority to accelerate the time for making the first dividend.

, Trustee.

Glasgow, 11th April, 1901.

NOTICE OF LODGING OF SCHEME OF DIVISION.

Sequestration of .

, trustee on the sequestrated estates of , hereby intimates that he has made up a scheme of ranking and division of the price of the heritable subjects situated in Street, , sold by him; and reported said scheme to the Lord Ordinary in order that the same may be approved of and a warrant granted for payment in terms of the Bankruptcy (Scotland) Act, 1856; and that by interlocutor dated the Lord Ordinary has appointed the trustee to intimate the petition in the *Edinburgh Gazette* and by circular letter to all the creditors in the sequestration, and allowed all concerned to appear for their interests, if so advised, within ten days after such intimation.

, Trustee.

[Place and date.]

APPENDIX.

Fees Payable in Bill Chamber.

1. Petitions for sequestration,	£0	12	6
2. Certified copies of petitions for sequestration and relative interlocutors, each,	0	7	6
3. Appeals in sequestrations, condescendences therein, minutes or notes to award sequestration or to dismiss petitions for sequestration, and other applications in or connected with sequestrations,	0	5	0
4. Answers or objections to Nos. 1 and 3,	0	5	0
5. Every extract or certified copy of proceedings in or connected with sequestrations other than certified copies under No. 2, per sheet of writing or part thereof,	0	1	0
6. Entering any schedule in any Bill Chamber record,	0	1	0
7. Petitions and notes before the junior Lord Ordinary, being first steps of process and answers thereto,	0	10	0
8. Petitions and notes before the junior Lord Ordinary, not being first steps of process, and answers thereto,	0	5	0
9. Reports by accountants, men of business, or other persons of skill, under remits by the Court,	0	5	0
10. Minutes or other incidental steps, and answers thereto,	0	2	6
11. Notes of suspension, suspension and interdict, or suspension and liberation, and answers thereto,	0	7	6
Note.—These fees to cover small charges hitherto made for copying complainer's statement of facts and interlocutors.			
12. Caveats when lodged or renewed,	0	2	6
13. Fiats,	0	2	6
14. Bills for loosing arrestments or inhibitions, and answers thereto,	0	2	6

15. Valuation appeals (railways and canals), -	£0	15	0
16. Maritime concurrences, with warrants to dismantle, - - - - - - - -	0	5	0
17. Registering office copies of orders of English and Irish Courts under Act of Sederunt of 21st June, 1883, - - - - - - -	0	5	0
18. Searches in any register in Bill Chamber—			
If under ten years from the date of the order,	0	2	6
Ten years and under twenty-five years, - -	0	7	6
Twenty-five years and upwards, - - -	0	12	6
19. Authentication by judge of act and warrant, in terms of sec. 73 of the Bankruptcy (Scotland) Act, 1856, - - - - - - - -	0	5	0
20. In proofs taken before Bill Chamber judge—			
(*a*) Notes of evidence—			
For each witness examined, - - -	0	2	6
(*b*) Report of Commission—			
For each witness or haver examined, -	0	1	0
21. Certified copy interlocutors, each, - - -	0	2	6
22. Copies of proceedings other than those above specified certified by Clerk of Court, - -	0	2	6
Note.—This and preceding fee cover all charges for writing.			
23. Inventory of documents put in evidence at close of proof, - - - - - - -	0	2	6
24. Bonds of caution, - - - - - - -	0	7	6
25. Accounts of expenses—			
(*a*) If below £100, - - - - - -	0	2	6
(*b*) If £100 or more, - - - - - -	0	5	0
In addition to these fees, the following fees for taxation must be paid on each account :—			
Under £10, - - - - - - -	0	5	0
£10 and under £20, - - - - - -	0	7	6
20 ,, 50, - - - - - -	0	10	0
50 ,, 100, - - - - - -	0	15	0
100 ,, 150, - - - - - -	1	5	0
150 ,, 200, - - - - - -	1	15	0
200 ,, 300, - - - - - -	2	10	0
300 ,, 400, - - - - - -	3	5	0
400 ,, 500, - - - - - -	4	5	0
500 ,, 600, - - - - - -	5	5	0
600 and above, for every additional sum of £100 or part of £100, - - - -	0	10	0

26. Extracts of decrees, and of bonds of caution, -	£0	10	0
And in addition for each sheet of writing beyond four sheets, - - - - -	0	2	6
27. Certified copy of proceedings for appeal to the House of Lords, - - - - - - -	2	0	0
28. Captions—			
Marking caption when ordered, - - -	0	2	6
Warrant for caption when issued, - - -	0	2	6
29. Every step or pleading not specified above, -	0	5	0

Supplementary Fees.

1. In Entail petitions—Certificates by agents, -	0	5	0
2. „ —Schedule of debts, - -			

Edinburgh Gazette.

Fees for all Notices, including Sequestration, Cessio, Partnership, and Miscellaneous.

It is requested that postage stamps of as large value as possible may be used and be completely affixed to the notice.

For 100 words and under, and one copy of *Gazette*, -	£0	10	9
Above 100 words, and not exceeding 150, and „ -	0	15	9
„ 150 „ „ 200, and „ -	1	0	9
„ 200 „ „ 250, and „ -	1	5	9
„ 250 „ „ 300, and „ -	1	10	9
„ 300 „ „ 350, and „ -	1	15	9
„ 350 „ „ 400, and „ -	2	0	9
„ 400 „ „ 450, and „ -	2	5	9
„ 450 „ „ 500, and „ -	2	10	9

and 5s. extra for each additional 50, or part of 50 words, and 9d. extra for each additional copy of the *Gazette*.

Notices cannot be accepted for insertion after one o'clock on *Tuesdays and Fridays*.

It is requested that notices may be written on paper of foolscap size.

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PRINTED BY
WILLIAM HODGE AND COMPANY,
GLASGOW AND EDINBURGH.